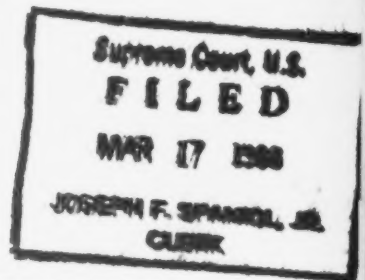


87-1680



No.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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GEORGE G. MILLS, SR., ET AL, PETITIONERS

v.

FRANCO FOOD EQUIPMENT, INC., ET AL

---

PETITION FOR A WRIT OF CERTIORARI FROM  
THE SUPREME COURT OF THE STATE OF MICHIGAN

---

LAW OFFICES OF LAWRENCE J.  
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## QUESTIONS PRESENTED

1. Did the Michigan Supreme Court exceed its constitutional authority by administratively delegating judicial authority to non-elected officials so as to violate the civil rights of the Petitioners and deny Petitioners the equal protection of the laws?

- A. Are the courts of Michigan the exclusive source of judicial power in that state and do they have jurisdiction to delegate that power to a private panel?
- B. In order to make judicial awards under the mediation rule as promulgated, must the panel be by persons elected to office?

2. Did the Michigan Supreme Court violate Petitioners' civil rights and right to equal protection of the law while the judiciary was acting in its administrative capacity when promulgating court rules which usurped the powers of the legislative and executive branches of government?

- A. Does the Michigan Supreme Court have the power and jurisdiction to mandate mediation absent consent of the parties?
- B. Does the Michigan Supreme Court have the power and jurisdiction to set mediation fees?
- C. Does the Michigan Supreme Court have the power and jurisdiction to mandate penalty fees?
- D. Does the Michigan Supreme Court have the power and jurisdiction to

mandate sanctions if mediation award is refused?

E. Does the Michigan Supreme Court have the power and jurisdiction to enter into a contract with an alleged non-profit corporation to furnish mediators?

F. Does the Michigan Supreme Court have the power and jurisdiction to mandate mediation fees -- and to allow a contractor to retain the excess of such fees paid out as retained earnings?

i. Does the Michigan Supreme Court have the power and jurisdiction to allow litigants' funds to be used for a golf outing which members of judiciary attend free of charge?

ii. Does the Michigan Supreme Court have the power and jurisdiction upon dissolution of non-profit organization to allow litigants' funds to be given to a charity? not of their choice? not refunded?

3. Did the Michigan Supreme Court exceed its constitutional authority, totally ignore the Separation of Powers, and encroach upon the state constitutional authority of the legislative and executive branches of government?

A. Is the Michigan Supreme Court's purported exercise of its rule-making power an administrative function that is reviewable by this Court when

Petitioner's civil rights have been violated?

- B. Is the Michigan Supreme Court's purported exercise of its rule-making power an administrative function that is reviewable by this Court when Petitioners have been denied equal protection of its state constitutional rights?
- C. Is mandatory mediation jurisdictionally defective as a result of an undue delegation of the judicial power by the Supreme Court and the lower courts of Michigan?
  - i. Do court rules govern only practice and procedure and cannot deny a litigant his substantive rights, including a right to a day in court?
  - ii. Is mandatory mediation an arbitrary denial of Plaintiffs' right to obtain that which is due and owing them from defendants and as such is a taking of plaintiffs' property rights without due process of law?

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OCTOBER TERM, 1988

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GEORGE G. MILLS, SR., ET AL, PETITIONERS

v.

FRANCO FOOD EQUIPMENT, INC., ET AL

---

PETITION FOR A WRIT OF CERTIORARI FROM  
THE SUPREME COURT OF THE STATE  
OF MICHIGAN

---

The Petitioners respectfully pray that a Writ of Certiorari issue to review the Order entered by the Supreme Court of the State of Michigan on January 29, 1988 denying Petitioners' Motion for Reconsideration of its Order entered November 17, 1987, reinstating a judgment against Petitioners entered July 13,

1983, which decision sets forth the refusal of that court to review the question of whether that Supreme Court of the State of Michigan exceeded the constitutional and jurisdictional limits on its own power and deprived the Petitioners of their civil rights, and also to review the November 17, 1987 Order.

#### OPINIONS BELOW

The Supreme Court of the State of Michigan did not file a formal opinion in this matter. The Orders referred to above are provided in Appendix A and B respectively.

#### JURISDICTION

The Order of the Michigan Supreme Court, Michigan's highest state court, denying your Petitioners' Motion for Reconsideration of its Order of November 17, 1987 was entered on January 29, 1988. The November 17, 1987 Order reversed the Michigan Court of Appeals and reinstated the judgment which had been

tered at the trial level. With the Order of January 29, 1988, the highest state court in which a decision could be had rendered final judgment, thus giving rise to jurisdiction for this Court to review the matter by Writ of Habeas Corpus. 28 U.S.C. §1257. For reasons set forth below, these Orders have the effect of depriving the Petitioners of their civil rights under color of law in violation of 42 U.S.C. § 1983, and deprived the Petitioners of procedural due process and of the equal protection of the laws as guaranteed under the Fourteenth Amendment of the Constitution of the United States.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4. The Fifth Amendment to the United States Constitution provides in relevant part:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

5. The Seventh Amendment to the United States Constitution provides in relevant part:

[T]he right of trial by jury shall be preserved.

6. The Fourteenth Amendment to the United States Constitution provides in relevant part:

\* \* \* No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

\* \* \*

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

7. 28 U.S.C. §1257 provides in relevant part:

Final judgments or decrees rendered by the highest court of a State which a decision could be had, may be reviewed by the Supreme Court as follows:

\* \* \*

(3) By writ of certiorari, where the validity of a treaty or statute of the

United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

8. 42 U.S.C. §1981 provides in relevant

part:

All persons within the jurisdiction of the United States shall have the same right in every State . . . to make an enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property.

9. 42 U.S.C. §1983 provides in relevant

part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, or other proper proceeding for redress.

10. The Michigan Constitution, 1963,

Article I, Section 2 provides in relevant part:

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights . . . the legislature shall implement this section by appropriate legislation.

11. The Michigan Constitution, 1963,  
Article I, Section 13 provides in relevant part:

A suitor in any court in this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

12. The Michigan Constitution, 1963,  
Article I, Section 14 provides in relevant part:

The right of trial by jury shall remain.

13. The Michigan Constitution, 1963,  
Article I, Section 17 provides in relevant part:

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

14. The Michigan Constitution, 1963,  
Article I, Section 23 provides in relevant part:

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

15. The Michigan Constitution, 1963, Article III, Section 2 provides in relevant part:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this Constitution.

16. The Michigan Constitution, 1963, Article IV, Section 2 provides in relevant part:

All legislation shall be by bill and may originate in either house.

17. The Michigan Constitution, 1963, Article VI, Section 1 states:

The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court or general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

18. The Michigan Constitution, 1963, Article VI, Section 5 provides in relevant part:



The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state.

19. The Michigan Constitution, 1963, Article VI, Section 12 provides in relevant part:

Circuit judges shall be nominated and elected at non-partisan elections in the circuit in which they reside, and shall hold office for a term of six years and until their successors are elected and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.

20. The Michigan Constitution, 1963, Article VI, Section 13 provides in relevant part:

The circuit court shall have . . . jurisdiction in all matters not prohibited by law.

21. Michigan Compiled Laws § 600.251 provides:

The supreme court may appoint, remove and shall have general supervision of its staff. It shall have control of the preparation of its budget recommendations and expenditures of moneys appropriated for any purpose by the legislature pertaining to the operation of the court or the performance of the activities of its staff.

All fees and perquisites collected by the court staff shall be transmitted to the state treasury and credited to the general fund.

22. Michigan Compiled Laws § 600.321

provides:

(1) The following fees shall be paid to the clerk of the court of appeals, and may be taxed as costs where costs are allowed by order of the court:

(a) The sum of \$100.00 for an appeal as of right, for an application for leave to appeal, or for an original proceeding. This fee shall be paid only once for appeals that are taken by multiple parties from the same lower court order or judgment and can be consolidated.

(b) Upon the entry of any motion upon the motion docket, there shall be paid to the clerk the sum of \$25.00.

(2) The clerk of the court of appeals shall be allowed the sum of 50 cents per page for certified copies of any entries or papers in any action or proceedings when required for any other purpose than one connection with the progress or disposition of such action or proceeding.

(3) The clerk shall charge the sum of 50 cents per page for all uncertified copies of opinions, excepting those sent to 1 counsel representing each party in the case, for which no charge shall be made.

(4) If a person is unable to pay the fees required by this section, the person, by motion, accompanied by the person's affidavit stating facts showing such inability, may ask the court to waive the fees and the court or a judge of the court may waive payment of the fees.

(5) Each month the clerk of the court of appeals shall deposit with the state treasurer all fees collected, securing and filing a receipt for the fees deposited.

(6) Costs shall be awarded in the discretion of the court.

(7) Upon appeal to the court of appeals, there shall be paid to the clerk of the trial court the sum of \$10.00 as an appeal fee.

23. Michigan Compiled Laws § 600.2455

states:

Costs in the circuit court, in the district court, and in municipal courts of record having civil jurisdiction, may be taxed by any of the judges or clerks of the courts and upon notice and proceedings as shall be provided by the rules of the supreme court.

24. Michigan Compiled Laws § 600.2528-

(1)(f)(ii) states:

(1) In the circuit court in a county having a population of less than 100,000 the following fees shall be paid to the clerk of the court:

\* \* \*

(f) Beginning July 1, 1983, in addition to the judgment fee provided in subdivision (d) or (e), before entry of a final judgment in an action for divorce or separate maintenance where minor children are involved, or the entry of a final judgment in a child custody dispute submitted to the circuit court as an original action, 1 of the following sums, which shall be deposited by the county treasurer as provided in section 2530.

\* \* \*

(ii) If the matter was contested or uncontested and was submitted to domestic relations mediation, \$50.00.

25. Michigan Compiled Laws, § 600.2529-

(1)(f)(ii) states in relevant part:

(1) In the circuit court in a county having a population of 100,00 or more the following fees shall be paid to the clerk of the court:

\* \* \*

(f) Beginning July 1, 1983, in addition to the judgment fee provided in subdivision (d) and (e), before entry of a final judgment in an action for divorce or separate maintenance where minor children are involved, or the entry of a final judgment in a child custody dispute submitted to the circuit court as an original action, 1 of the following sums, which shall be deposited by

the county treasurer as provided in section 2530.

★ ★ ★

- (ii) If the matter was contested or uncontested and was submitted to domestic relations mediation, \$50.00.

26. The text of Michigan Compiled Laws § 500.5001 et seq. and § 500.5040 et seq. have been set forth in Appendixes D and E, respectively.

27. Michigan Compiled Laws, § 600.8326 provides:

The schedule of fees and the rate of mileage provided in section 2559 shall be the fees and the rate of mileage for process served out of the district court.



## STATEMENT OF THE CASE

In this action, the highest court in Michigan, the Michigan Supreme Court, in its Order of November 17, 1987, was asked in an Application for Leave to Appeal by cross-appellant to review the question of whether it had not in fact exceeded the limits of its constitutional and jurisdictional administrative power, accorded to it in the Michigan State Constitution, to make rules regulating the practice and procedure of Michigan courts, by promulgating forced mediation with sub-rules and effective mechanics to carry this procedure out which included, but was not limited to, setting fees, contracting for services, sanctions and penalties which is in the province of the legislative and executive branches of government. By so doing, the Michigan Supreme Court has violated the provisions of the Constitution of the state of Michigan.

In so doing, the Michigan Supreme Court has deprived Petitioners of their civil rights under color of law in violation of 42 U.S.C. §§1983 and deprived the Petitioners of procedural due process and of the equal protection of the laws which is guaranteed under the Fourteenth Amendment of the Constitution of the United States, and also under Article 1, §17 of the Michigan Constitution of 1963.

On November 2, 1979, by Order of the Supreme Court of the State of Michigan, the local court rules of Wayne County, Michigan, respecting the extra-judicial resolution of disputes through mandatory mediation, were adopted. The text of that local court rule as well as that of Michigan Court Rules 2.403, in which it is presently embodied, are set forth in Appendix C. The rule provides for mandatory mediation and for sanctions for the improvident rejection of the evaluation of the three private attorneys that make up the mediation panel. In Wayne County, Michigan,



the process of mediation, though ordered by the courts, is administered by a private, "non-profit" organization known as the Mediation Tribunal Association. Every year, the Mediation Tribunal Association throws a big "bash" for attorneys and judges, paid for with litigants' money. Judges attend for free and are given their fill of food and alcohol gratis. The rule further provides that a failure to file a written rejection of the evaluation in a timely fashion automatically results in acceptance. In this case, the Petitioners mailed a written rejection of the evaluation to the private organization that administers the mediation process in Wayne County, twelve days in advance of the deadline. However, whether because the United States Postal Service delayed in delivering the rejection, or because the aforementioned private organization temporarily misplaced the notice of rejection after receiving it, the rejection was not considered to have been filed until the day after the time

for filing had run. Accordingly, judgment in accordance with the mediation evaluation was automatically entered. Petitioners moved to have that judgment set aside based on un rebutted testimony that they had clearly been diligent in mailing their written rejection considerably in advance of the filing deadline. The trial judge of the Wayne County, Michigan Circuit Court refused to set the judgment aside. Petitioners appealed to the Michigan Court of Appeals, which reversed the lower court, set the judgment aside and remanded the case for further proceedings. Plaintiffs also filed a supplemental brief in the Michigan Court of Appeals which set forth an attack on the jurisdiction of the Michigan Supreme Court to promulgate the rule in question, contrary to the provisions of the Michigan Constitution which grant the Michigan Supreme Court an administrative power to promulgate rules of court procedure but not substance, which Constitution reserves the power to enact

legislation to the legislature and forbids the Supreme Court to encroach on that power. After granting leave to file that supplemental brief on jurisdiction, the Court of Appeals did not in fact review it. After the decision favorable to Plaintiffs in the Court of Appeals (on the issue of timely filing), Defendants appealed to the Michigan Supreme Court. In addition to filing their brief as appellees, Petitioners filed an application for leave to file a cross-appeal on the jurisdictional question. The Supreme Court denied such leave, declining to review the question of their own jurisdiction to promulgate the mediation rule. The Michigan Supreme Court also reversed the Court of Appeals and reinstated the judgment which had been entered in the Michigan Circuit Court.

REASONS FOR GRANTING THE WRIT

THE MICHIGAN SUPREME COURT EXCEEDED ITS CONSTITUTIONAL AUTHORITY BY ADMINISTRATIVELY DELEGATING JUDICIAL AUTHORITY TO NON-ELECTED OFFICIALS SO AS TO VIOLATE THE CIVIL RIGHTS OF THE PETITIONERS AND DENY PETITIONERS THE EQUAL PROTECTION OF THE LAWS.

A. The courts of Michigan are the exclusive source of judicial power in that state and do not have jurisdiction to delegate that power to a private panel.

Article 3, § 2 of the Michigan Constitution of 1963, which provides for the separation of powers along the same lines as the Federal Constitution, is set forth above under "Constitutional and Statutory Provisions Involved." No branch of government can exceed the constitutional limitations placed on it and from which its jurisdiction and scope of authority emanate. But equally as true, no branch of the state's government can shuck the duties and responsibilities conferred on it by the constitution. By delegating power to hear cases to mediators and mediators selected by

the Michigan Tribunal Association, the private organization which administers the mediation process in Wayne County, Michigan, the Michigan Supreme Court has illegally delegated to such mediators and mediation panels the duties and responsibilities placed on the courts by the laws and constitution of this state. The Michigan Constitution of 1963, Article VI, §1 states:

"The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court or general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house."

The key word in the above paragraph is "exclusively." The courts of this state are the sole vested source of judicial power. By providing for mandatory mediation, this Court has unconstitutionally delegated power to an entity known as the Mediation Tribunal Association and also to the mediators handling

cases assigned to mediation (which in this individual's experience is every case on the docket of every Circuit Court of this State) violating Article 6, § 1 of the Michigan Constitution.

In the case of Brown v. Kalamazoo Circuit Judge, 75 Mich. 274, 285; 42 N.W. 827 (1889) the Michigan Supreme Court stated that "Any change which transfers power that belongs to a jury, a judge or or any other person or body, is [a] plain violation of the Constitution." [Emphasis added.] Brown was cited with approval in the more recent case of Abner A. Wolfe, Inc. v. Walch, 385 Mich. 253, 188 N.W.2d 544 (1971).

This ruling has direct application to this petition. The Michigan Supreme Court has delegated the judicial power of the courts of Michigan to Mediation Panels which exercise more power than the limited issue-resolution function of juries in Brown. The mediation board and the Mediators have the power to

render a ruling on the merits of a case. Such rulings are not binding unless accepted by both parties to the mediation, but a refusal to accept the unanimous ruling or evaluation of a mediation panel when that same ruling has been accepted by the opposite party can make the rejecting party liable for all costs and attorney fees incurred by the opposite party at trial if the rejecting party fails to win a verdict at trial that is respectively either greater than or less than ten percent (10%) of the panel's evaluation, as provided in the rule in question. See Appendix C attached hereto.

In effect, then, a panel's evaluation can severely affect the substantive property rights of the parties with its ruling in a particular case, by denying a prevailing party the full amount of the verdict at trial, off-setting that verdict by costs and attorney fees where the party fails to win a figure substantially higher than the mediator's evaluation. The verdict is the amount to which the party is legally

entitled, having had his case tried by due process of law, stripping the prevailing party of a portion of the verdict, perhaps the greater part, plainly violates due process.

This sanction puts "teeth" into the rulings of the mediation panel and effectively deters and penalizes those who decide to proceed to trial with their case. This sanction is particularly repulsive in light of the mandatory nature of mediation and the apparent open access of the courts to all litigants. Thus, the deterrent effect on litigants to prevent them from proceeding to trial, and the applicability of sanctions to penalize them if they do, effectively supplants the court with the mediation panel as the primary body for case resolution. The court serves only to rubber stamp the rulings of the mediation panel. Such a delegation of duty is unconstitutional. Michigan's judicial power is vested, not the mediation panel's -- whose sole purpose of which is to cram settlement down



the proverbial throats of many unwilling participants, under judicially authorized threats of financial punishment, rather than evaluate, deliberate, analyze, digest and render opinions based on many hours, days and weeks of trial in the matter. Too many mediators don't know what they are doing, don't read the mediation statements and law, don't give a damn -- all they know is collect \$75.00 per party x 32 cases a day and tell the parties to settle. This insults every citizen of this state. They don't need 3 paid dolts to tell them this, three attorneys who have their own practice of law, who may spend all of 20 minutes on the matter, including the mediation hearing itself.

B. The mediation rule violates the principle under the Michigan State Constitution that judicial awards must be made by elected judges.

A mediation panel is not composed of judges, but attorneys appointed by a process using plaintiffs attorneys, defendants

attorneys, and neutral attorneys and selected for the most part from personal injury practitioners with alleged "expertise" in this one area of the law. There are no set qualifications for panel mediators, only the local judges' unfettered discretion in appointing them (or the Mediation Tribunal Association's employment of them). The panel itself has unfettered discretion in making its decisions, for there are no set guidelines for it to follow. The panel members themselves are not even subject to public scrutiny of their actions or recall through the election process as are judges.

The mediators are not judges nor are they subject to the explicit checks and balances applicable to the judicial system. Yet the mediators perform ostensibly a judicial function often substantially affecting the substantive rights of the parties. The panel has the power to decide questions of law and fact and even determine jurisdictional amounts

within fifteen minutes' time, as to cases that may take weeks to try before the Bench or jury and enforce its rulings by threatening litigants with actual costs and attorney fees of the opposition party if they reject a unanimous panel's evaluation. Such questions of law and fact must be decided by qualified judges duly elected by the citizens of this state, or by a jury.

Judicial power in Michigan rests only in courts and judicial officers and all the judges and judicial officers must be elected directly by the people of the state or of the local districts. Allor v. Board of Auditors of Wayne County, 43 Mich. 76, 4 N.W. 492 (1880). But this is not the case with mediators, mediation panels, or the Mediation Tribunal Association. The mediators are not elected. They are not subject to direct public scrutiny through the election process. Yet they perform the same function as a court of law.

In Allor, the court stated:

"It is also very clearly settled by the Constitution that judicial power can only be vested in courts and judicial officers, and that all of the judges and judicial officers, without exception, must be elected directly by the people of the State or of their local district. This makes it necessary to be cautious in extending other powers when a conflict is likely to be created."

43 Mich. at 97. The Michigan Constitution of 1963, Article 6, § 12, set forth above under "Constitutional and Statutory Provisions Involved," specially provides for the public election of circuit court judges.

The intent of the framers of Michigan's constitution was to have judges, like the members of the executive and legislative branches of this state's government, responsible to the citizenry through the election process. The mediation panel is not subject to public control and scrutiny through the election process. Forced resolution of cases by these unelected umpires is unconstitutional.

Under MCR 2.403, each panel member is paid on a "per case basis," creating an incentive for the panel to dispose of cases quickly so as to maximize their per-hour pay. Ostensibly, mandatory mediation was set up to provide for a rapid resolution of cases. Mediation Tribunal Association mediators are paid \$600.00 per day! Yet there are no set qualifications for panel members, only that they have a minimum of five (5) years law practicing experience. This arrangement very often results in panel members who are incompetent in the area of law around which a particular case revolves, or, more commonly, a view by the individual panel members that their sole function as mediators is to force a settlement of the case (using the sanctions available to them to be applied to a party who rejects the unanimous evaluation of the panel that was accepted by the opponent). The merits of the case are glossed over, as the primary focus of the panel is the dollar amount

claimed; due and owing by each side. Such an approach of incentive for rapid case resolution would not happen or at the least would be far less likely with publicly elected judges with statutorily set compensation and the expertise required of all judges in all areas of the law, to make rulings dictated by the maxims of justice. Allowing the non-elected personnel who are not judges to decide cases at mediation, with the deterrent and penalty provisions provided when there is a rejection of a panels' decision, is unconstitutional as an illegal delegation of the duties of the judicial and functions and powers of a judge. Such, arguably, would not be the case if the parties voluntarily agreed to mediation, but, in point of fact, the courts assign all cases to mediation without regard to the rights or wishes of the parties. In practice, every case in every Michigan circuit court is referred to mediation, including those in which mediation is not allowed by the terms of the court rule

itself. Because of the above reasons, compulsory mediation is an unconstitutional delegation of judicial authority. It is interesting to note that if a judge's ruling is unaccepted, appealed and sustained, only interest and taxable costs as set forth by statute (Michigan Compiled Laws § 600.2455) are allowed, not sanctions. Why does the "award" of Mediators have greater power than that of the Judge legally and duly assigned to the case? Why does the "award" determine whether the case belongs in state district court (less than \$10,000.00) or state circuit court (more than \$10,000.00)? Such determinations belong to a judge!

2. THE MICHIGAN SUPREME COURT VIOLATED THE PETITIONERS' CIVIL RIGHTS AND RIGHTS TO EQUAL PROTECTION OF THE LAWS WHILE THE JUDICIARY WAS ACTING IN ITS ADMINISTRATIVE CAPACITY WHEN PROMULGATING COURT RULES WHICH USURPED THE POWERS OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT.

A. The Michigan Supreme Court does not have the power and jurisdiction to mandate mediation absent consent of the parties.

In general, parties do not agree to mediation. Rather, it is forced upon them by the courts. Mediation is not purely a procedural matter but can have deleterious affects on the substantive rights of the parties. The arbitration statute, Michigan Compiled Laws § 600.5001 et seq., shows that public policy does not favor a dispute resolution procedure which has not been agreed upon by the parties. The statute states that arbitration may be provided where the party voluntarily agreed or submitted to it. Arbitration is not compulsory despite the numerous cases stating that arbitration is looked upon with favor by the courts. City of Detroit v. A.W. Kutsche Co., 309 Mich. 700, 16 N.W.2d 128 (1944).

The Michigan Supreme Court has sought to force the parties to mediate their dispute by deterring them from proceeding to trial and



penalizing them if they do and then fail to receive a judgment more than 10% higher than the board's "evaluation."

Where the parties have not agreed to settle their dispute through mediation, it is unconstitutional for any court to compel them to do so. The mediation panel serves only to try and force a settlement of the case. The parties can perform this settlement function themselves without incurring the costs and potential sanctions of mandatory mediation.

B. The Michigan Supreme Court does not have the power and jurisdiction to set mediation fees.

Nowhere does the Constitution provide that the Michigan Supreme Court can set fees for the courts, let alone set fees for the extra-judicial resolution of disputes. Neither is there any statutory provision for such setting of fees by the court. Rather, these fees are set by the legislature. See, e.g., Michigan Compiled Laws (M.C.L.) § 600.2528(1)(f)(ii) or § 600.2529(1)(f)(ii),

depending on county population (\$50.00 mediation fee for domestic relations mediation, which neither party may be forced to participate in.) See also, M.C.L. § 600.2528(1) et seq., and § 600.2529(1) et seq. (filing fees for circuit court), M.C.L. § 600.8326 (filing fees in district court), and M.C.L. § 600.321 (filing fees in court of appeals). The only provision whereby the legislature gives the Michigan Supreme Court any monetary or budgetary authority is M.C.L. § 600.251, which is set forth above under the heading of "Constitutional and Statutory Provisions Involved." There is no reference in that provision to fees, sanctions or penalties. Indeed, it is fundamental that costs and fees may only be provided by the legislature. City of Muskegon v. Slater, 379 Mich. 466, 152 N.W.2d 652, 653-654 (1967).

The actions of the Michigan Supreme Court in ordering mediation, making it compulsory and setting mediators' fees constitute an

illegal seizure of power and violate the separation of powers and other specific constitutional provisions.

C. The Michigan Supreme Court does not have the power and jurisdiction to mandate penalty fees.

Mandatory mediation unconstitutionally deters all parties' use of the courts. In the case of Carver v. McKernan, 390 Mich. 96, 211 N.W.2d 24 (1973), the court in reviewing the six-month notice requirement of the Motor Vehicle Accident Claim Act observed that:

"At the outset, we acknowledge frankly that statutes which limit access to the courts by people seeking redress for wrongs are not looked upon with favor by us."

211 N.W.2d at 26. Mandatory mediation serves to effectively deter litigants from exercising their right of use and access to the courts. Further, it penalizes those litigants who do proceed to trial by making them potentially liable for all costs and attorney fees incurred by the opposite party pursuant to the mediation rules. These deterrent and penalty

provisions of mandatory mediation make it unconstitutional as a denial of due process. Litigants are denied use of and access to the courts and forced to settle their case at mediation or face the dire consequence of paying all costs and actual attorney fees for the opposition party that accepted the evaluation of the mediation panels. For an extended trial such costs and fees could be expensive; or else be forced to accept an award based on forced mediation, a legal shakedown of \$75.00 in mediator's fees (and \$60.00 penalty for late filing).

Plaintiffs bring their actions against their Defendants in the courts, and, in general, seek the protection of their rights in a court of law. They seek to have the courts construe and apply the applicable law to their dispute. But in order to get their case before a court of law, the parties are forced to pay \$75.00 mediation fees, go before three (3) individuals (mediators) with no expertise,

unfettered discretion, without appellate review or superintending control, whose sole purpose was not to evaluate cases on their merits, but to force unwanted settlements and through sanctions of costs and attorney fees (if Plaintiffs sought to try the case they had to increase the mediation panels' award), made by non-evaluation (an "instant tea bag" evaluation) and failed to do so by more than 10% as well as be deemed bound by alleged "silence as acceptance" of the "award" provisions. This is a change in substantive law in this State. Yet the Michigan Supreme Court legislated this change in the guise of "procedure."

In the landmark case of Boddie v. Connecticut, 401 U.S. 371 (1970), this Court reviewed a citizen's due process right to access to the courts in the American constitutional system. The Court observed:

"Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a

system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a "legal system", social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society.

\* \* \*

American society, of course, bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common law model. It is to court, or other 'quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original Constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this system. Without this guarantee that one may not be deprived of his rights, either liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. It is upon this premise that this

Court has through years of adjudication put flesh upon the due process principle."

401 U.S. at 374-375 [Emphasis added.]

Mandatory mediation does not necessarily deny litigants initial access to the judicial systems, but it serves to deter litigants from proceeding to trial through legal blackmail, legal extortion, and duress.

D. The Michigan Supreme Court does not have the power and jurisdiction to mandate sanctions if the mediation award is refused.

Mediation may be ordered on motion by the Court and, is thus mandatory. Presumably then, if a litigant refuses to mediate his case he can be held in contempt of court with its ensuing sanctions including the entry of a default judgment against the disobedient party. Further, mandatory mediation requires a \$75.00 fee from each Plaintiff and Defendant. This fee is in addition to filing, service and other fees and costs initially incurred by a

litigant (as well as a possible \$60.00 penalty for late filing, a \$10.00 motion fee to adjourn mediation, etc.)

Before each mediation hearing, the mediation panel supposedly reviews the mediation summary submitted by each side. In fact, due to the press of cases, all but the most perfunctory review is the exception rather than the rule. Often, the summaries submitted are not reviewed at all.

A party must incur the costs involved in submitting all pertinent documents to the members of the mediation panel and to each party involved or face a \$60.00 penalty and other possible sanctions available to the court. Thus, a litigant must prepare a mediation summary and incur the costs relating thereto (including attorney fees, copying costs, mailing costs, etc.) for without a concise, succinct, articulated, legal presentation of the issues, the party may lose at mediation or be awarded a judgment less than that legally due



and owing him, such that a rejection of the unanimous evaluation of the mediation panel coupled with the acceptance of the panels' evaluation by the opposite party may make the litigant liable after trial for all costs and attorney fees of the other party. In essence, then, a litigant must incur not only the initial filing fee, service fees and perhaps a jury fee for initiating a suit, but he must also incur a \$75.00 mediation fee (and possibly more if penalty provisions are applied), plus pay an attorney and the costs relating thereto.

That every man is entitled to his day in court, Geigling v. Helmbold, 357 Mich. 462, 464, 98 N.W.2d 555 (1959), is axiomatic, indeed it is to our constitutional system of government. Mandatory mediation denies, deters and penalizes the exercise of this fundamental right. The Michigan Supreme Court lacked jurisdiction to order mandatory mediation, including its "silence is acceptance" provision. This Court should so declare.

E. The Michigan Supreme Court does not have the power and jurisdiction to enter into a contract with an alleged non-profit corporation to furnish mediators.

The Michigan Supreme Court can point to no provision of the Michigan Constitution, and can point to no legislative enactment, which authorizes it to enter into a contract with the supposedly non-profit corporation known as the Mediation Tribunal Association to furnish mediators. Rather, the presupposition of the Michigan Constitution's framers, and of Michigan's legislature is that unless the parties voluntarily agree to some alternative means of dispute resolution, their disputes will be resolved by any elected judge. See the Michigan Constitution, 1963, Article I, § 23, giving a suitor the right to prosecute or defend his suit in court, and also Article VI, §§ 1 and 12, providing for the election of judges. The texts of these provisions are set forth above under the heading of "Constitutional and Statutory Provisions Involved."

F. The Michigan Supreme Court does not have the power and jurisdiction to mandate mediation fees -- and to allow contractor retain the excess of such fees paid out as retained earnings.

- i. The Michigan Supreme Court does not have the power and jurisdiction to allow litigants' funds to be used for a golf outing which members of judiciary attend free-of-charge.

Every year, the Mediation Tribunal Association, which oversees the mediation process in Wayne County, Michigan, throws a big "bash," in the form of a golf outing, to which judges are invited to attend free-of-charge. The judges are given their fill of food and alcohol gratis. This "bash" is paid for out of this non-profit corporation's excess. This "non-profit" corporation is allowed to retain the excess of these fees and pay the same out as retained earnings. The spectacle of seeing judges stuffed with food and drink paid for with litigants' fees -- which those litigants were compelled to pay against their will -- is a disgusting and appalling sight. There is no provision of the Michigan Constitution, and no

statute, which allows the Supreme Court to hold up and rob unwilling litigants for the sake of entertaining attorneys and currying favor with free-loading judges. The Michigan Supreme Court has clearly overstepped its jurisdictional bounds. The rule which gives rise to this sickening bacchanal should be struck down, as the Michigan Supreme Court clearly has no jurisdiction to promulgate such a rule.

- ii. The Michigan Supreme Court does not have the power and jurisdiction upon dissolution of a non-profit organization to allow litigants' funds to be given to a charity -- not of their choice -- not refunded.

Mediation in Wayne County is administered by a non-profit corporation known as the "Mediation Tribunal Association". (See Articles of Incorporation and Annual Reports attached hereto as Appendix F.) Each mediator is are paid \$600.00 a day. All expenses for the Mediation Tribunal Association

are paid out of the required \$75.00 mediation fee. A \$60.00 penalty is paid to this non-profit association in the event of late filing. The Mediation Tribunal Association has had a cash and property flow and surplus as follows (approximately):

1980 -	\$25,000.00
1981 -	\$280,000.00
1982 -	\$580,000.00
1983 -	\$350,000.00

The Articles of Incorporation for the Mediation Tribunal Association provides that if it disbands or ceases operations, the surplus is to be donated to charity. While this is admirable, what right does the court have to order litigants to donate to charity? Are the Wayne County litigants paying the court-mandated mediation fee able to deduct this as a charitable contribution?

3. THE MICHIGAN SUPREME COURT EXCEEDED ITS CONSTITUTIONAL AUTHORITY, TOTALLY IGNORING THE SEPARATION OF POWERS, AND ENCROACHED UPON THE STATE CONSTITUTIONAL AUTHORITY OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT.

A. The Michigan Supreme Court's purported exercise of its rule-making power is an administrative function that is reviewable by this Court when Petitioners' civil rights have been violated.

The Michigan Constitution, 1963, Article VI, § 5 gives the Michigan Supreme Court the power to make rules concerning "practice and procedure in all courts of this state." That court has itself held that:

"While this Court cannot enact substantive laws, it does have the authority to decide upon the procedures to be followed in the courts of this state. Such authority has been exercised by adopting [court rules]."

People v. Fields, 391 Mich. 206, 216 N.W.2d 51, 53 (1974). See also, Maplehill Apartment Co. v. Stine, 131 Mich.App. 371, 346 N.W.2d 555 (1984), Krajewski v. Krajewski, 125 Mich.App. 407, 335 N.W.2d 923 (1983), reversed on other grounds, 420 Mich. 729, 362 N.W.2d 230 (1984). The court in Fields,

supra, refers to the "fundamental . . . concept that ours is a government of laws and not of men." Id. Based on that principle, the court wisely observed:

"Review is an essential part of the judicial process . . . an all important element in the decision making process is the ever-present possibility in every case that the decision of a judge will be subjected to appellate review. If that possibility is removed, the judge becomes a monarch from whose ruling -- good, bad or indifferent -- there is no recourse."

Id., citing this Court's decision in Kent v. United States, 383 U.S. 541 (1966). Despite those noble sentiments, however, the Michigan Supreme Court in this case has refused to review its own exercise of its own purported authority to adopt procedural rules to be followed in Michigan courts.

In this case, the Michigan Supreme Court has exceeded its authority to "decide upon the procedures to be followed in the courts of Michigan", Fields, 216 N.W.2d at 53 [Emphasis added.], and has encroached upon the legislative function by enacting a legislative scheme

for the extra-judicial resolution of disputes. This is contrary to the Michigan Constitution, 1963, Article III, § 2 which provides:

"The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this Constitution."

The rule adopted by the Michigan Supreme Court likewise abridges the right to trial by jury which is guaranteed under both the Michigan Constitution, 1963, Article I, § 14, and the Sixth Amendment to the United States Constitution, which is made applicable to the states through the Fourteenth Amendment. Faretta v. California, 422 U.S. 806 (1975), Argersinger v. Hamlin, 407 U.S. 25 (1972). The Court's decision thus denies these several rights and other unenumerated rights which are retained by the Petitioners in particular, and the citizens of the state of Michigan and of the United States in general, pursuant to the Ninth Amendment to the United States



Constitution and by the Preamble to the Michigan Constitution, 1963, Article I, § 23. This violation of civil rights is contrary to 42 U.S.C. §§1981 and 1983.

The Michigan Supreme Court has itself declared that the exercise of its rule-making power is an administrative function. As stated in People v. Booth, 414 Mich. 343, 324 N.W.2d 741 (1982):

"This Court does possess broad powers in the form of practice and procedure as provided in the 1963 Constitution. However, this does not mean that where this Court for some reason has failed to exercise its administrative rule-making powers to address a particular procedural problem, the legislature's own pronouncement in this area is a nullity.

324 N.W.2d at 747. [Emphasis added.] In Forrester v. White, 56 U.S.L.W. 4067 (1988), this Court held that a state supreme court's administrative functions were not adjudicative or judicial in nature:

"Difficulties have arisen primarily in attempting to to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as

in other contexts, immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches.

This Court has never undertaken to articulate a precise general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform.

\* \* \*

Administrative decisions, even though they may be essential to the very functioning of the Courts, have not similarly been regarded as judicial acts. In Ex Parte Virginia, 100 U.S. 339 (1880), for example, this Court declined to extend immunity to a county judge who had been charged in a criminal indictment with discriminating on the basis of race in selecting trial jurors for the county's courts. The Court reasoned:

'Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge . . . that the jurors are selected for a court makes no difference. So are court-criers, tipstaves, sheriffs, &c. Is their election or their appointment a judicial act?'

Id. at 348.

\* \* \*

Likewise, judicial immunity has not been extended to judges acting to promulgate a code of conduct for attorneys. Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U.S. 719 (1980). In explaining why legislative, rather than judicial, immunity furnished the appropriate standard, we said: 'although it is clear that under Virginia law the issuance of the Bar Code was a proper function of the Virginia Court, propounding the Code was not an act of adjudication but one of rule making.' Id. at 731. Similarly, in the same case, we held that judges acting to enforce the Bar Code would be treated like prosecutors, and thus would be amenable to suit for injunctive and declaratory relief. Id., at 734-737. Cf. Pulliam v. Allen, 446 U.S. 522 (1984). Once again, it was the nature of the function performed, not the identity of the actor who performed it, that informed our . . . analysis.

\* \* \*

To conclude that, because a judge acts within the scope of his authority, such . . . decisions are brought within the court's 'jurisdiction,' or converted into 'judicial acts,' would lift form above substance. Under Virginia law, only that State's judges could promulgate and enforce a Bar Code, but we nonetheless concluded that neither function was judicial in nature. See Supreme Court of Virginia v. Consumers Union, supra."

56 U.S.L.W. at 4069-4070. It is clear from the foregoing that the Michigan Supreme Court's rule-making power is administrative rather than judicial in nature. Where, as here, the Michigan Supreme Court makes rules that go beyond deciding "upon the procedures to be followed in the courts of this state," People v. Fields, 391 Mich. 792, 216 N.W.2d 51, 53 (1974), to the enactment of a legislative scheme that must be approved by the Governor (or a veto overridden) by resolution of disputes by persons other than judges appointed, in this case, by a private organization, the court has clearly exceeded its authority under the Michigan Constitution. It has thus violated the guaranty of the Michigan Constitution, implicit also within the structure of the United States Constitution, that the powers of government are divided into three branches, legislative, executive and judicial, each of which shall operate to check and balance the power of the other against

overreaching, and that "no person exercising powers of one branch shall exercise powers properly belonging to another branch." Michigan Constitution, 1963, Article III, § 2. Notwithstanding the noble sentiments expressed by the Michigan Supreme Court in People v. Fields, supra, that "an all-important element in the decision making process is the ever-present possibility in every case that the decision of a judge will be subjected to appellate review," and its observation that "if that possibility is removed, the judge becomes a monarch from whose ruling -- good, bad or indifferent -- there is no recourse," 216 N.W.2d at 53, the Michigan Supreme Court has effectively held itself above the necessity for reviewing its own acts for lack of jurisdiction, abuse, or overreaching. In fairness to the Michigan Supreme Court, asking it to undertake a review of the jurisdiction and constitutionality of its own actions is rather like asking the fox to guard the hen house. It is

therefore for this Court to review, lest federal civil rights guaranteed through the Fourteenth Amendment to the United States Constitution and the other rights incorporated therein be violated in contravention of 42 U.S.C. §§ 1981 and 1983.

B. The Michigan Supreme Court's purported exercise of its rule-making power is an administrative function that is reviewable by this Court when Petitioners have been denied equal protection of its state constitutional rights.

Mandatory mediation is a violation of the equal protection clauses in the United States and Michigan Constitutions. Compulsory mediation violates these provisions.

Mandatory mediation creates a disadvantaged class of litigants -- the litigants who prevail at trial and do not pay "all costs and attorney fees" of the opposing party versus those who do in spite of prevailing at trial. There are those litigants who prevail at trial and do not pay "all costs and attorney fees" of

the opposition party, versus those who do in spite of prevailing at trial.

In Michigan circuit courts, submission of case to mediation is automatic and mandatory. Due to mandatory mediation a litigant must pay a \$75.00 filing fee (\$60.00 penalty) plus incur extensive attorney fees for researching and preparing a mediation summary and then having their attorney appear before the mediation board to present their case. Such costs can be extensive. A "win" at trial on a meritorious claim may be offset by costs and attorney fees awarded the opposition for its acceptance of the unanimous panels' evaluation and the prevailing party's rejecting of it. Mediation can have the same effect as trial without a trial's procedural and judicial safeguards. This is a clear denial of equal protection of the laws of this state between litigants who prevail at trial and are required to pay the mediation sanctions as oppose to those who win at trial and are not so required

to pay the sanctions. For example, a plaintiff may win a judgment "only" 10% higher than the panels' evaluation, rather than prevail at trial and win a judgment 11% higher than the panels' evaluation. The 10% increase at trial can be all but wiped out by costs and actual attorney fees imposed upon the litigant for his rejection of a unanimous panels' evaluation (assuming the other side accepted it), while the latter gets the full benefit of the judgment awarded. There is no rational basis for such a classification. Both parties had meritorious claims and both prevailed at trial, yet the parties are treated radically different. This is unconstitutional and violative of both the Michigan and United States Constitutions. This is an arbitrary denial of the substantive and procedural rights of a class of litigants by penalizing them when they seek to exercise these rights. Surely, this is unconstitutional as a denial of equal protection and should be so declared by this Court.



Mediation, therefore, can have the same effect as trial, without the trial's procedural and judicial safeguards. This is a clear denial of equal protection of the laws of this state. The burden placed upon litigants is unjustifiable, especially in light of the mandatory nature and requirement of mediation. If the parties consented to mediation and consented to file an acceptance or rejection, or silence is acceptance, the result would be different, that is not the case here. The courts have designated the class -- not the legislature!

The Michigan Supreme Court said in Fitzpatrick v. Liquor Control Commission, 316 Mich. 83; 25 N.W.2d 118 (1947) in setting forth the standard in reviewing a denial of equal protection claim and stated:

"The fundamental rule of classification for purposes of legislation is that it shall not be arbitrary and the classification is not reviewable unless palpably arbitrary and unreasonable."

Id at p.95.

In People v. Chapman, 301 Mich. 584; 4 N.W.2d 18 (1942), the court in reference to an equal protection challenge to another statute stated that:

"It is well recognized that the legislature may make classifications of persons, provided such classifications are based on substantial distinctions and are in accord with the aims sought to be achieved. [citations omitted]. However, such classification must be neither arbitrary or capricious, but must rest on reasonable and justifiable foundations."

301 Mich. at 597-598. [Emphasis added.] And again, in the case of Fox v. Michigan Employment Security Commission, 379 Mich. 579; 153 N.W.2d 644 (1967), the court in applying this test observed:

"There is no doubt that State legislatures have a broad range of discretion in establishing classifications in the exercise of their powers of regulation. However, the constitutional guarantees of equal protection are interposed against discriminations that are entirely arbitrary. In determining what is within legislative discretion and what is arbitrary, regard must be had for the particular subject of the State legislation. There must be a relation between the classification and the purpose of the act in which it is found."

153 N.W.2d at 647. [Emphasis added.] In Fox, a claimant receiving weekly worker's compensation payments was denied unemployment compensation benefits. The court held this classification unconstitutional as a denial of equal protection. The court noted the number of exceptions to the rule and people who were entitled to collect both worker's compensation benefits and unemployment benefits. The court found that there was no substantial rationale or justifiable difference between the classes.

The Fox case has direct application to the case now before the court. Litigants must submit their case to mediation and are liable for the resulting costs of mediation and potential sanctions if one avoids mediation or rejects the unanimous or majority evaluation of a mediation panel or fails to affirmatively reject the award. It must be remembered that there is a great deterrent effect on litigants to proceed to trial with their cases, penalizing

litigants for proceeding to trial if they do not do "good enough."

Article 1 of the Michigan Constitution 1963, §2, the equal protection clause, is substantively identical to the corresponding clause in the Federal Constitution. In Berry v. School District of City of Benton Harbor, 467 F.Supp. 721 (E.D. Mich. 1978) it was held that the basic principles of constitutional interpretation require that the court give effect to the plain meaning of the words used in the constitutional provision, as those words were understood by the people who adopted the constitution. Also, in Schroeder v. Staton-Hudson Corporation, 448 F.Supp. 910, (E.D. Mich. 1978), opinion amended in 456 F.Supp. 650, the court held that the equal protection clause (Article 1, §2) in the Michigan Constitution of 1963 was intended to afford the same rights as the Federal equal protection clause. See also Wahl v. Brothers, 60 Mich.App. 66, 230 N.W.2d 311 (1975). In

summary. Plaintiffs herein submit that Article 1, §2 of the Michigan Constitution of 1963, has the same meaning as Amendment Fourteen to the United States Constitution concerning equal protection.

Where a party voluntarily proceeds to arbitration (as statutorily provided pursuant to M.C.L. § 600.5001 et seq.), as distinct from mediation, the parties are entitled to present all of their proofs, bring in witnesses, have stenographers, brief their matters, opening statements, closing statements, and in negligence cases at fees far more reasonable than the Mediation Tribunal, and predicated upon the fact that it is a voluntary situation. Furthermore, arbitrators for the American Arbitration Association donate their time in personal injury matters, and are not paid for their efforts (Petitioner having sat as the neutral arbitrator on many occasions, and having never heard a matter, let alone resolved a matter, in 30 minutes). In fact,

arbitrators plan to spend minimum an entire afternoon on cases and at times more than one full day, plus write their findings of fact and their conclusion with their arbitration award, without compensation. In contract cases the fee paid to the American Arbitration Association is based upon the amount of the contract claim, but then again, it has not been unusual to spend as many as 10 to 12 days arbitrating a case, for which the arbitrators are paid a reasonable fee after free service the first day. The purpose of arbitration, of course, is to expedite the hearing time of a matter (avoid docket delays of years) on a voluntary basis with expert arbitrators hearing the issues in the areas of their expertise with the award being binding in absence of certain statutory exceptions.

The Mediation Tribunal Association, a non-profit corporation, administers the mediation process pursuant to contract with the Wayne County, Michigan Circuit Court.

Was this contract obtained on open bid pursuant to statute? ordinance? Did it bypass the Wayne County Board of Supervisors (Board of Commissioners) at the time such contract was entered into? Was not this Mediation Tribunal Association merely a creation of the judiciary? Hasn't this violated the separation of powers of the three (3) branches of government? As W.C.R. 403 could not come into existence and being, without the approval of the Michigan Supreme Court, it is quite apparent that the Supreme Court of Michigan by lack of jurisdiction has violated Article 1, §2, supra, in having the Plaintiffs herein denied equal protection of the laws for failure of the legislature to implement such equal protection by legislation. Did not the Michigan Supreme Court fail to adhere to Article 4, §2, supra, requiring all legislation (by bill) to originate either in the House or Senate of the State of Michigan? Did not the Supreme Court (Michigan) violate Article 3,

§2, supra (being separation of powers), by the judiciary wrongfully attempting to create by non-existent powers of appointment, powers to contract, power to administer the Michigan Tribunal Association, the mediation panels? the entire mediation process? Aren't these executive functions?

Furthermore, there were and are court-created rules relieving an indigent of the payment of fees and costs. These rules don't apply to mediation, however.

The only way that the mediation fee can be waived would be by the Mediation Tribunal Association benevolence, if at all.

The creation of these mediation provisions are so violative of the statutes and the Constitution of the State of Michigan, that a telephone book could be written in its entirety as to how the Michigan Judiciary has flaunted the Constitution and the Statutes in the State of Michigan to exhibit an unheard of abuse of power in order to attempt to clean up a docket



which has been created due to their own inefficiency. Petitioner submits that even the janitor who sweeps out the courthouse and the courtroom, (and window washers) are those that are under the executive branch of government in positions that were created by legislature, whose salaries were created by the legislature, and if civil servants, whose existence was created by legislation.

Here we have three (3) attorneys, who are employed by a non-profit association to sit unconstitutionally as mediators denying parties' due process and equal protection rights for the sum of \$600.00 per day being paid to them by this non-profit corporation out of mediation fees that were ordered to be paid by the judiciary of the State of Michigan. This unconstitutional house of cards is beyond the scope of the Supreme Court to construct.

We are not dealing with a legislative classification but a judicially imposed classification -- one that is arbitrary and unreasonable.

Cases are no longer dealt with on an individual basis but rather with the goal of forcing Plaintiffs into a pre-trial settlement and alleviating the case load on the State Circuit Court dockets. The extraordinary costs of mediation, coupled with potential liability for actual costs and attorney fees and with the "silence is acceptance" theory makes this an unreasonable classification that violates Petitioners' equal protection rights.

C. Mandatory mediation is jurisdictionally defective as a result of an undue delegation of the judicial power by the Supreme Court and the lower courts of Michigan.

- i. Court rules govern only practice and procedure and cannot deny a litigant his substantive rights, including a right to a day in court.

In Michigan, court rules properly govern only practice and procedure and cannot deny a litigant his substantive rights. Article 6, § 5 of the Michigan Constitution of 1963.

Practice and procedure is to be distinguished from substantive law. Substantive law

was distinguished from procedural law by the Arizona high court in State v. Birmingham, 96 Ariz. 109, 110, 392 P.2d 775, (1964). The court stated that:

"Substantive Law' is that part of the law which creates, defines and regulates rights; whereas 'adjecture, remedial or procedural law' is that which prescribes method of enforcing the right of obtaining redress for its invasion."

In Anderson v. Twin City Rapid Transit Co., 250 Minn. 167, 184; 84 N.W. 3d 593 (1957), the Minnesota Supreme Court stated:

"A 'substantive law' is that part of law which creates, defines, and regulates rights, as opposed to 'adjecture or remedial law' which prescribes methods of enforcing rights or obtaining redress for their invasion."

Clearly then, there is a big difference between "procedural law and practice", and "substantive law". The Michigan Court Rules deal only with practice and procedure, not the substantial rights of the parties. Charles W. Joiner and Oscar J. Miller, in an article written in the Michigan Law Review, defined practice and procedure in "Rules of Practice and Procedure;

A Study of Judicial Rule Making," 55 Mich. L. Rev. 629, 631 (1957) as follows:

"Procedural law has been defined as 'the method of enforcing rights or obtaining redress for their invasion and as 'the machinery' for carrying on the suit. Practice has been defined as 'the mode of proceeding' by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding the Court is to administer the machinery as distinguished from the product. Similarly, 'practice includes the formula by which that power is first asserted and afterwards exercised in respect to any litigation in all its phases, until the same is finally completed.' As stated by the Illinois Supreme Court, 'the proceedings and practice' of the courts must be construed to mean the form in which actions are brought and the manner of conducting and carrying on suits.'"

The authors went on to say that it was fundamental that:

"\* \* \* court rules could not contravene constitutional provisions, extend or divide the jurisdiction of the courts over the subject matter, abrogate or modify substantive law."

Id. at 634. The Michigan Supreme Court can only make rules that affect the practice and procedure of the courts as defined above. The Supreme Court lacks jurisdiction to make

substantive law. In Shannon v. Ottawa Circuit Judge, 245 Mich. 220; 222 N.W. 168 (1928), a local court rule for the Ottawa County Circuit Court inhibited the making of contracts for contingency fees between an attorney and client. If a Plaintiff was required to give security by way of a court order and he couldn't afford the security, the Plaintiff and his attorney had to sign affidavits that there was no agreement between them for a division of the judgment. The proceeds of any subsequently judgment granted plaintiff would be paid to the court with the judge fixing the compensation of the attorney. The Court in Shannon held that if there was a change in public policy regarding contingency fees, it was for the legislature to decide and enact, not for the court by way of a local court rule. The court went on to say that a litigant by a court rule cannot be deprived of a substantial right. Id. at p.222.

The federal courts have also recognized the limitations of court rules as applying only to practice and procedure. In Saylor v. Taylor, 77 Fed. 476, (4th Cir 1896), the court made a rule regulating the priority of claims in an admiral case. The court rule conflicted with the priority of liens given under the maritime law. In reference to authority of the court to create rules governing practice and procedure and this rule resulting in conflict of priority with the maritime law;—the court in Saylor held the court rule valid and said at p.480:

"By virtue of this section the courts may make rules of practice, but they cannot create rules of law. They cannot divest or displace rights or liens which owe their existence, not to its process, but to the general maritime law. Rights acquired under the statutes of the United States, or under the general maritime law, which these courts are created to administer, are rules of property, and it is beyond the potency of judicial power to alter them, or take them away by rules of practice. See also, Ward v Chamberlain, 2 Black (U.S.), 430, 437; 8 Am & Eng. Enc. Law (2d Ed.), pp. 29, 30; State, ex rel. Tooreau v Posey, 17 La. Ann. 252 (87 Am. Dec. 525); State v Bryant, 55

Mo. 75; Cates v Mack, 6 Colo. 401;  
Hickernell v National Bank, 62 Pa. St.  
 146; Covey v Williamson, 286 Fed. 459;  
State v Gideon, 41 Am. St. Rep. 634,  
 and note (119 Mo. 94, 24 S.W. 748)."

It is clear, then, that court rules govern only practice and procedure of the court. The court cannot enact a court rule to deny a litigant a substantive right. Yet, this is exactly what the court has done by allowing for mandatory mediation and "silence as acceptance" under MCR 2.403 (Appendix C) and thereby arbitrarily depriving litigants of their substantive property rights, and changing Michigan substantive law. Moreover, mediation by private hirelings is not practice and procedure in and before the courts.

Indeed, while the statutes prescribe only limited and nominal attorney fees and costs to the prevailing party, except in very limited and statutorily prescribed circumstances, the Michigan Supreme Court has taken it upon itself to act as the legislature and change this substantive law -- pay actual fees and costs if

a party does not do "good enough." While the legislature could arguably enact statutes permitting this, it has not done so; this is an area for the legislature and not the court to act. The court has no jurisdiction to enact the rule in question.

ii. Mandatory mediation is an arbitrary denial of Plaintiffs' right to obtain that which is due and owing them from defendants and as such is a taking of plaintiffs' property rights without due process of law.

Mandatory mediation is a denial of due process of the law in that a party is arbitrarily denied his property right to recover from an opponent what is due and owing from the other. Such compulsory, non-judicial dispute resolution violates the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, §17 of the Michigan Constitution of 1963. The Michigan constitutional due process clause states in Art. 1, §17 of Const of 1963 as follows:



"No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

[Emphasis added.] Mandatory mediation violates the principles of due process and compensating balances. A party is entitled to recover what is due. The amount is to be decided in a court of law, or equity, open to all litigants to resolve their disputes. To make a party take less is an arbitrary taking of Plaintiffs' property. Mandatory mediation deters litigants from utilizing the court system to resolve their dispute. It penalizes them for exercising their right to resolve their dispute in a court of law by assessing actual costs and attorney fees against a party who rejects a unanimous mediation panel's evaluation (no matter how the case was decided or how incompetent were the mediators) that was accepted by his adversary and then failed to increase or decrease the trial award by more or less than 10% of the proposed settlement figure of

the panel, or in Wayne County, be forced to take less than that due based on "silence is acceptance", because rejection takes an affirmative act. Without mediation, taxable costs, interest and mediation rule provisions are all that are allowable.

In Crusick v. Feldpausch, 259 Mich. 349 (1932), in discussing property rights the court stated:

"It would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another."

[Emphasis added.] The Michigan Supreme Court has mandated a procedural device hoping for the speedy disposition of cases (compulsory mediation). Yet, this procedural device can make substantial findings of fact and law and have its decision entered as final, all without the consent of the parties. It can abrogate

the substantive property rights of a litigant, and penalize a litigant if he chooses to disregard a unanimous or majority panels' decision. It abrogates the jurisdiction of the court and denies Plaintiffs their right to have their claim heard in a court of law or equity or tried by a jury.

Mandatory mediation is an unconstitutional attempt to alleviate the case load in this state. No one denies that the excessive backlog of cases in this state is a real problem. But case disposition at the expense of a litigant's substantive and procedural rights, or penalizing him when they are exercised, is not only clearly unconstitutional, but is beyond the scope of the state Supreme Court's jurisdiction. This rule makes a mockery of our system of justice and should be declared a nullity.

CONCLUSION

The Petition for Writ of Certiorari should  
be granted.

Respectfully submitted,

LAWRENCE J. STOCKLER & ASSOCIATES,  
P.C.

BY 

LAWRENCE J. STOCKLER (P 21042)

Attorneys for Petitioners  
15565 Northland Drive  
Suite 500 Northland Towers East  
Southfield, MI 48075  
(313) 569-7700

Dated: March 11, 1988

APPENDIX A



MICHIGAN SUPREME COURT

Lansing, Michigan

Dorothy Comstock Riley  
Chief Justice

Charles L. Levin  
James H. Brickley  
Michael F. Cavanagh  
Patricia J. Boyle  
Dennis W. Archer  
Robert P. Griffin  
Associate Justices

ORDER

Entered: January 29, 1988

81366(45)

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs, Counter-  
Defendants-Appellees,

v

SC: 81366  
COA: 92663  
LC: 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants-Counter-  
Plaintiffs-Appellants.

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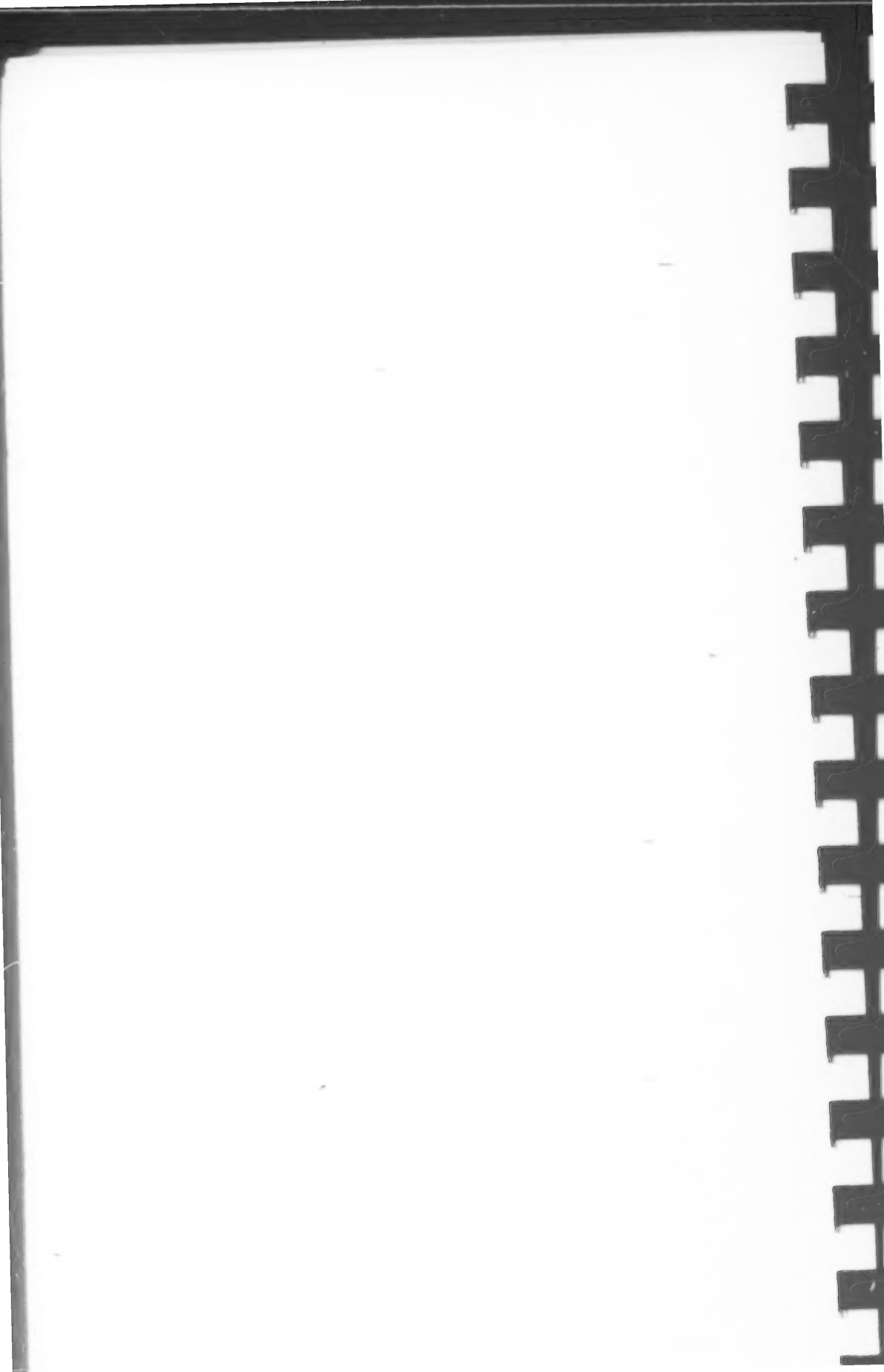




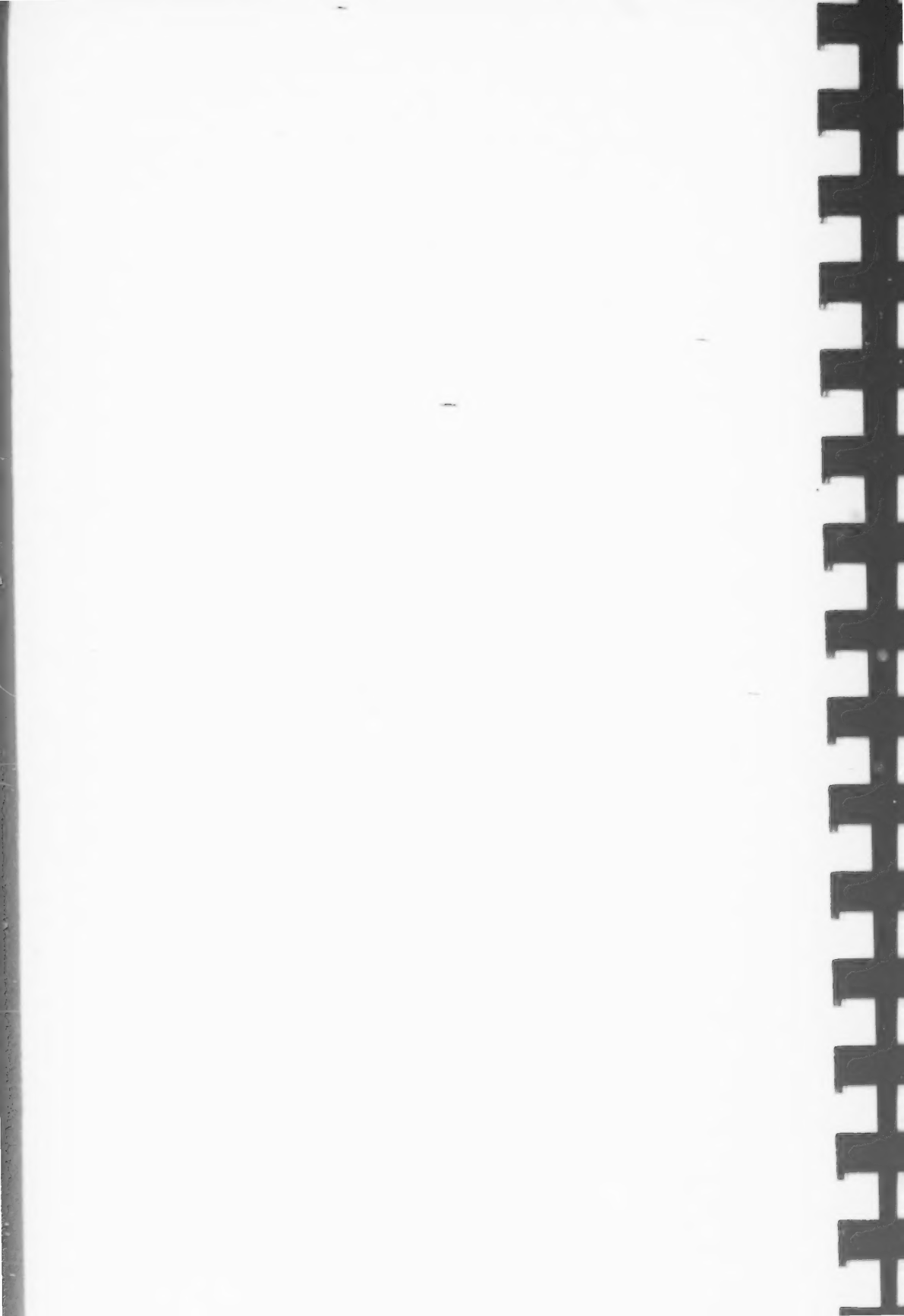
On order of the Court, the motion for reconsideration of this Court's order of November 17, 1987 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 29, 1988      Corbin R. Davis, Clerk



APPENDIX B



AT A SESSION OF THE SUPREME COURT OF  
THE STATE OF MICHIGAN, Held at the Su-  
preme Court Room, in the City of Lansing, on  
the 17th day of November in the year of our  
Lord one thousand nine hundred and  
eighty-seven.

Present the Honorable  
Dorothy Comstock Riley,  
Chief Justice

Charles L. Levin,  
James H. Brickley,  
Michael F. Cavanagh,  
Patricia J. Boyle,  
Dennis W. Archer,  
Robert P. Griffin,  
Associate Justices

81366 & (39)

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs, Counter-  
Defendants-Appellees,

v

SC: 81366  
COA: 92663  
LC: 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,



Defendants-Counter-  
Plaintiffs-Appellants.

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On order of the Court, the application for leave to appeal is considered and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the July 13, 1983 judgment and the May 8, 1986 order of the Wayne Circuit Court. We are not persuaded that the Wayne Circuit Court abused its discretion.

The application for leave to appeal as cross-appellant is also considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Archer, J., would not decide this case by peremptory order, but would grant leave to appeal.





STATE OF MICHIGAN-ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and complete copy of an order entered in said court in said cause; that I have compared the same with the original, and that is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of November in the year of our Lord one thousand nine hundred and eighty-seven.

Jacqueline B. MacKinnon, Deputy Clerk



## APPENDIX C



## MICHIGAN COURT RULES OF 1985

### RULE 2.403 MEDIATION

(A) Scope and Applicability of Rule. A court may submit to mediation any civil action in which the relief sought consists of money damages or division of property.

(B) Selection of Cases.

(1) The judge to whom an action is assigned or the chief judge may select it for mediation by written order no earlier than 91 days after the filing of the answer

- (a) on written stipulation by the parties,
- (b) on written motion by a party, or
- (c) on the judge's own initiative.

(2) Selection of an action for mediation has no effect on the normal progress of the action toward trial.

(C) Objections to Mediation.

(1) To object to mediation, a party must file a written motion to remove from mediation



and a notice of hearing of the motion and serve a copy on the attorneys of record and the mediation clerk within 14 days after notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the court orders otherwise.

(2) A timely motion must be heard before the case is submitted to mediation.

(D) Mediation Panel.

(1) Mediation panels shall be composed of 3 persons.

(2) The procedure for selecting mediation panels must be provided by local administrative order, and may set minimum qualifications for mediators.

(3) A judge may be selected as a member of a mediation panel, but may not preside at the trial of any action in which he or she served as a mediator.





(E) Disqualification of Mediators. The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge.

(F) Mediation Clerk. The court shall designate the clerk of the court, the court administrator, the assignment clerk, or some other person to serve as the mediation clerk.

(G) Scheduling Mediation Hearing.

(1) The mediation clerk shall set a time and place for the hearing and send notice to the mediators and the attorneys at least 28 days before the date set.

(2) Adjournments may be granted only for good cause, in accordance with MCR 2.503.

(H) Fees.

(1) Within 14 days after mailing of the notice of the mediation hearing, each party must send to the mediation clerk a check for



\$75 made payable in the manner specified in the notice of the mediation hearing. However, if a judge is a member of the panel, the fee is \$50. Only a single fee is required of each party, even where there are counterclaims, cross-claims, or third-party claims. The mediation clerk shall arrange payment to the mediators.

(2) If one claim is derivative of another (e.g., husband-wife, parent-child) they must be treated as a single claim, with one fee to be paid and a single award made by the mediators.

(3) In the case of multiple injuries of a single family, the plaintiffs may elect to treat the action as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the mediation panel will then make separate awards for each



claim, which may be individually accepted or rejected.

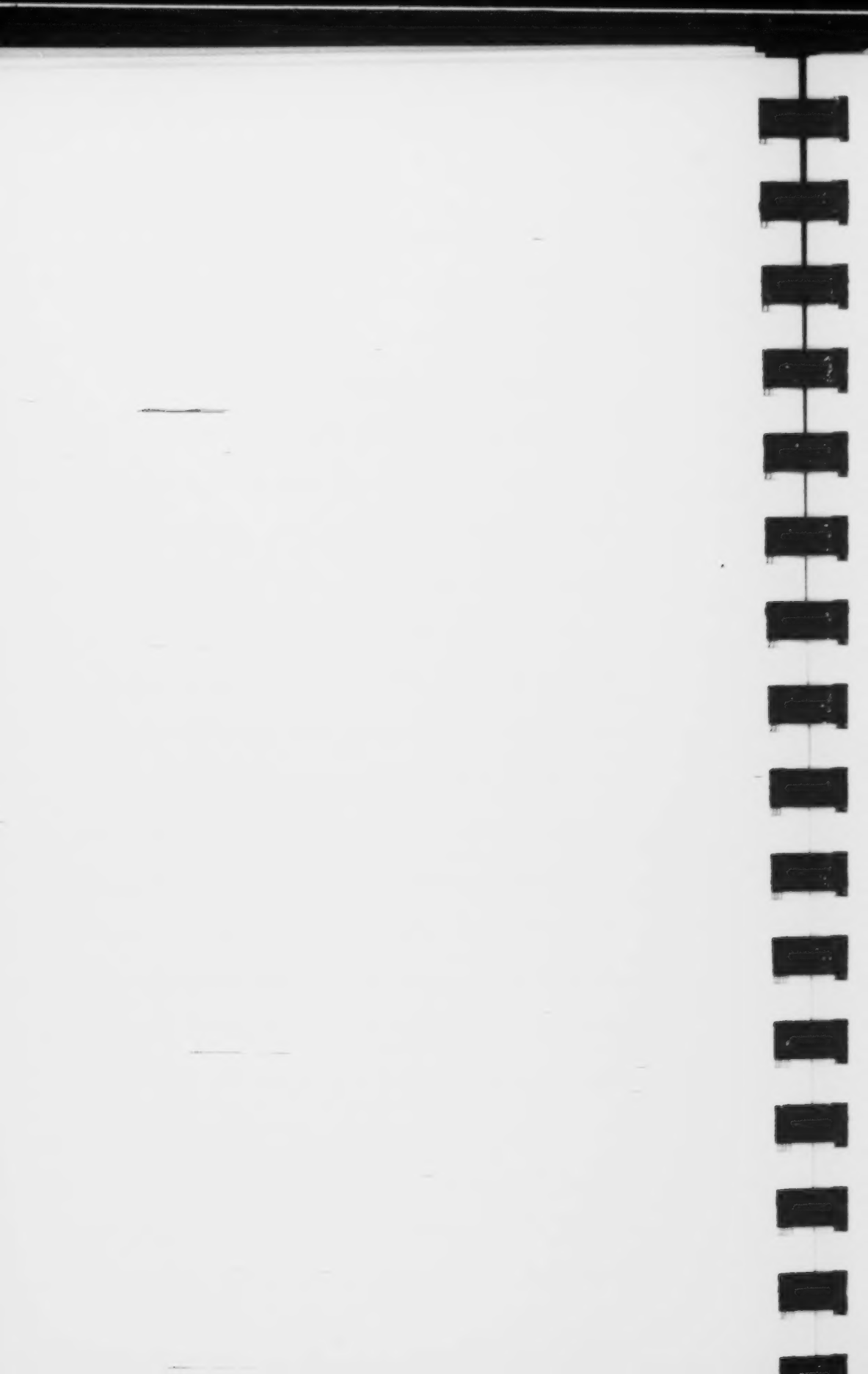
(I) Submission of Documents.

(1) At least 7 days before the hearing date, each party shall submit to the mediation clerk 3 copies of documents pertaining to the issues to be mediated and 3 copies of a concise brief or summary setting forth that party's factual or legal position on issues presented by the action. In addition, one copy must be served on each attorney of record.

(2) Failure to submit these materials to the mediation clerk within the above-designated time subjects the offending party to a \$60 penalty to be paid at the time of the mediation hearing and distributed equally among the attorney-mediators.

(J) Conduct of Hearing.

(1) A party has the right, but is not required, to attend a mediation hearing. If



scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.

(2) The rules of evidence do not apply before the mediation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

(3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. The mediation panel may request information on applicable insurance policy limits and may inquire about settlement negotiations, unless a party objects.

(4) Statements by the attorneys and the briefs or summaries are not admissible in any court or evidentiary proceeding.

(K) Decision.

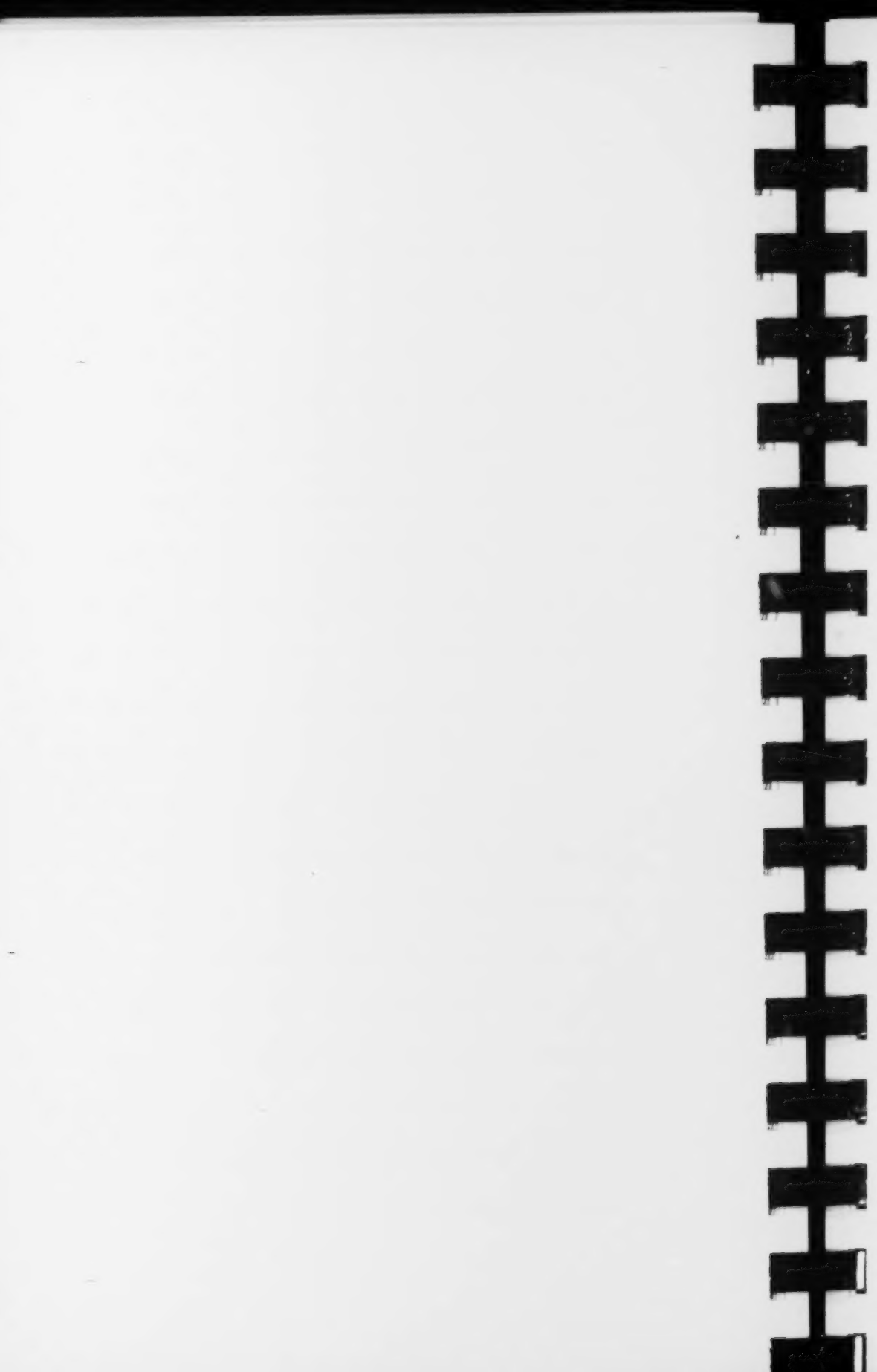




(1) Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of its evaluation in writing. If an award is not unanimous, the evaluation must so indicate.

(2) The evaluation must include a separate award as to each cross-claim, counter-claim, or third-party claim that has been filed in the action. For the purpose of this subrule all such claims filed by any one party against any other party shall be treated as a single claim.

(3) In an action pending in the circuit court, if the evaluation does not exceed the jurisdictional limitation of the district court, the panel shall include with the copy of the evaluation provided to the mediation clerk a statement as to whether the damages sustained, without regard to questions of liability, exceed the jurisdictional limitation of the district court.



(L) Acceptance or Rejection of Evaluation.

(1) Each party must file a written acceptance or rejection of the panel's evaluation with the mediation clerk within 28 days after service of the panel's evaluation. The failure to file a written acceptance or rejection within 28 days constitutes acceptance.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In mediations involving multiple parties the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.



(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if all opposing ps accept. If this limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

(c) If a party make a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept.

(M) Effect of Acceptance of Evaluation.



(1) If all the parties accept the panel's evaluation, judgment will be entered in that amount, which includes all fees, costs, and interest to that date of judgment.

(2) In a case involving multiple parties, judgment shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(N) Proceedings After Rejection.

(1) If all or part of the evaluation of the mediation panel is rejected, the action proceeds to trial in the normal fashion.

(2) The mediation clerk shall place a copy of the mediation evaluation and the parties' acceptance and rejections in a sealed envelope for filing with the clerk of the court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.





(3) If the mediation evaluation of an action pending in the circuit court does not exceed the jurisdictional limitation of the district court, the mediation clerk shall inform the trial judge of that fact and of the statement of the mediation panel under subrule (K)(3).

(O) Rejecting Party's Liability for Costs.

(1) If a party has rejected an evaluation and the action proceeds to trial, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the mediation evaluation.

(2) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to



the date of the mediation evaluation. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation.

(3) For the purpose of this rule, actual costs include those costs taxable in any civil action and a reasonable attorney fee as determined by the trial judge for services necessitated by the rejection of the mediation evaluation.

(4) Costs shall not be awarded if the mediation award was not unanimous.

[Amended January 25, 1985; amended January 22, 1987 to apply to mediation hearing conducted and removal orders entered on or after April 1, 1987.]



WAYNE COUNTY CIRCUIT  
COURT RULE 403

Rule 403 Mediation

.1 Eligible Cases.

The court may submit any civil case to mediation when the relief sought is exclusively money damages or division of property.

.2 Manner of Selection of Cases.

A case may be selected for mediation:

- (1) by stipulation of the parties at any time as long as mediation does not interfere with trial of the case,
- (2) on written motion by a party and order of the court, or
- (3) on order of the chief judge.

.3 Objections to Mediation.

To object to mediation, a party must:

- (1) file a written motion with the clerk of the court and a copy with the



mediation tribunal clerk within 15 days after the date of the court's notice assigning the case to mediation, and

- (2) serve a copy on opposing counsel and the chief judge.

If the motion is filed, the case may not be assigned for a mediation hearing until the chief judge, or a judge he assigns, has ruled on it.

[Amended and effective Nov. 2, 1979.]

.4 Mediation Board.

- (a) Mediation boards will be composed of three attorneys.
- (b) The Mediation Tribunal Association shall select the mediators.

[Amended September 8, 1982, eff. September 15, 1982.]

.5 Term of Mediators.





The term of a member of a mediation board is one week unless otherwise ordered.

[Amended and effective Nov. 2, 1979.]

.6 Disqualification of Mediators.

The rule for disqualification of mediators is the same as that provided in GCR 1963, 912 for the disqualification of judges.

.7 Procedure for Mediation.

(a) Time and Place for Hearing; Notice.

After a case has been selected for mediation by one of the methods set forth in Rule 403.2, the tribunal clerk shall set a time and place for the hearing and send notice to the mediators and opposing counsel at least 30 days before the date set.

(b) Submission of Documents. At least three court days before the hearing date, each party must submit three copies of all documents pertaining to



the issues to be mediated to the Mediation Tribunal Association and one copy to opposing counsel.

Each party shall also submit a concise brief or summary setting forth that party's factual and legal position on issues presented by the action.

A failure to submit these proofs within the above-designated time subjects the offending party to a \$60 penalty payable at the time of the mediation hearing and distributed equally to the Mediation Tribunal Association.

[Amended and effective Nov. 2, 1979; September 8, 1982, eff. September 15, 1982.]

(c) Presence of Parties; Evidence. A party has the right, but is not required, to attend or be present at a mediation hearing. When scars, disfigurement or other unusual



conditions exist, they may be demonstrated to the board by a personal appearance; however, no testimony will be taken or permitted of any party.

- (d) Decision. After the hearing the board will make an evaluation of the case and notify each counsel of its evaluation in writing, on the day of the hearing in person, or, if necessary by mail within 10 days of the date of the hearing.

[Amended September 8, 1982, eff. September 15, 1982.]

- (e) Action on Board's Decision. Written acceptance or rejection of the board's evaluation must be given to the tribunal clerk within 40 days of the mailing of the board's evaluation. There may be no disclosure of a party's acceptance or rejection of the board's evaluation until the



expiration of 40 days following notification. At the expiration of the above period, the tribunal clerk shall send a notice indicating each counsel's acceptance or rejection of the board's evaluation. If the evaluation of the mediation board is rejected, the tribunal clerk shall place all mediation documents in a sealed manila envelope before forwarding them to the County Clerk for filing. The envelope may not be opened in a nonjury case until the trial judge has rendered judgment.

.8 Fees

On the Submission of the stipulation to mediate or within 10 days of the notice or order requiring mediation, each injured party and each defendant shall send to the Mediation Tribunal Association \$75. Derivative claims (husband-wife, parent-child) must be treated as one injury. In the case of multiple





injuries to members of a single family, the plaintiffs or defendants may elect to treat the cases as involving one injury, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no election is made, the fee must be paid for each injured party, and the board will then make separate awards for each injury, which may be accepted or rejected.

[Amended and effective Nov. 2, 1979; September 8, 1982, eff. September 15, 1982.]

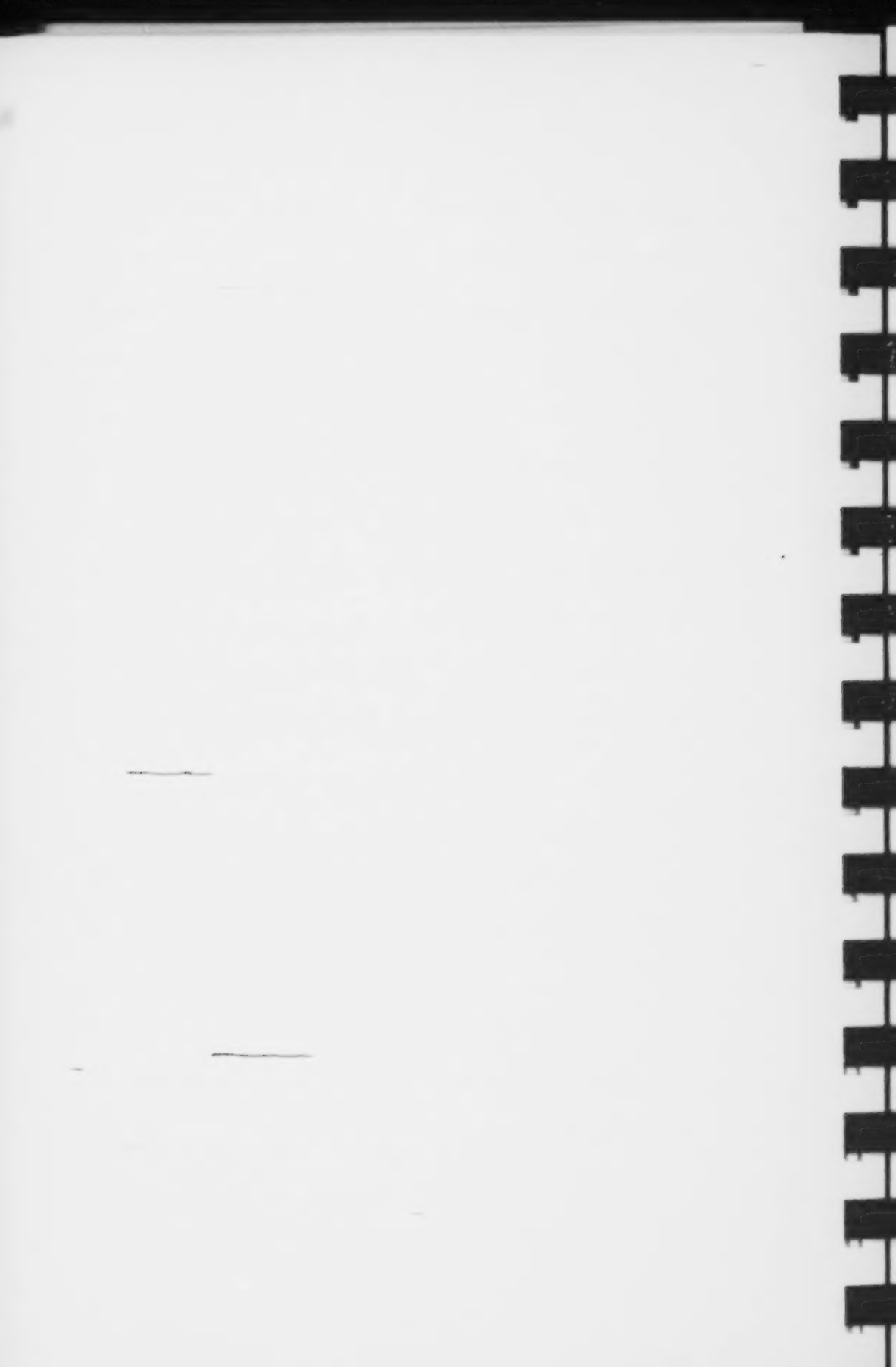
.9 Place of Hearing.

The tribunal clerk shall designate the place of hearing.

.10 Time for Hearing.

The tribunal clerk shall designate a hearing date.

.12 Hearings.



- Oral presentation of information is limited to 15 minutes per side, unless there are multiple parties or unusual circumstances warranting additional time. The board may request information on the status of settlement negotiations and applicable policy limits.

13. Adjournment of Hearing.

- (a) Adjournments of hearings are to be avoided whenever possible. If an attorney who is principally in charge of a case is in actual trial, he will be entitled to an adjournment of the hearing date as a matter of right if he gives opposing counsel and the board one day's advance notice. Otherwise mediation hearings must be given preference over other matters. Whenever possible, the attorney in principal charge of a case should delegate responsibility for attendance at the hearing to another person



when he is in trial so as to minimize the number of adjournments.

- (b) When cases are settled or otherwise disposed of before the hearing date, it is the duty of both counsel to notify the tribunal clerk of the disposition of the case as soon as possible so an attempt can be made to fill the time set aside for that hearing.
- (c) When a copy of the final disposition order of a case is given to the tribunal clerk at least 15 days before the hearing date, the fee paid to the tribunal clerk for that hearing will be returned.

[Amended and effective Nov. 2, 1979.]

- (d) Failure to comply with the rules for adjournment under this section subjects offending counsel to the payment of all mediation fees for all



other parties who are required to pay additional fees.

[Amended September 8, 1982, eff. September 15, 1982.]

.14 Evidence.

The rules of evidence do not apply before the mediation board. Factual information having a bearing on the question of damages must be supported by documentary evidence whenever possible.

.15 Effect of Mediation.

- (a) If the board's evaluation is not rejected under rule 403.7(e), a judgment will be entered in that amount, which includes all fees, costs and interest to the date of judgment.
- (b) If any party rejects the board's evaluation, the case proceeds to trial in the normal fashion. If the





evaluation is \$10,000 or less, a date for hearing before the chief judge will be set for the purpose of determining whether the case should be removed to the district court. A notice of hearing will be served on counsel for the parties at least 5 days before the hearing date. The chief judge will enter an order of removal unless objection to removal is made at the hearing. The penalty provisions still apply to cases which are removed.

[Amended September 8, 1982, eff. September 15, 1982.]

(c) When the board's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and



assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the board's evaluation in order to avoid the payment of actual costs to the defendant.

(d) When the board's evaluation is unanimous, and the plaintiff accepts the board's evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of mediation evaluation are added, is more than 10 percent below the evaluation of the board or pay actual costs.

(e) When the board's evaluation is unanimous and both parties reject



the board's evaluation and the amount of the verdict, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is within 10 percent above or below the board's evaluation, each party is responsible for his own costs from the mediation date. If the verdict is in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent above the board's evaluation, the defendant shall be taxed actual costs. If the verdict is in an amount which when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is



more than 10 percent below the board's evaluation, the plaintiff shall be taxed actual costs.

.16 Actual Costs. •

Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial in circuit court, determined by the trial judge in accordance with the fee prevailing locally.





APPENDIX D



MICHIGAN COMPILED LAWS

§ 600.5001 et seq.

600.5001. Arbitration agreements; parties;  
award

Sec. 5001. (1) Parties. All persons, except infants and persons of unsound mind, may, by an instrument in writing, submit to the decision of 1 or more arbitrators, any controversy existing between them, which might be the subject of a civil action, except as herein otherwise provided, and may, in such submission, agree that a judgment of any circuit court shall be rendered upon the award made pursuant to such submission.

(2) Enforcement; rescission. A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid,



enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract. Such an agreement shall stand as a submission to arbitration of any controversy arising under said contract not expressly exempt from arbitration by the terms of the contract. Any arbitration had in pursuance to such agreement shall proceed and the award reached thereby shall be enforced under this chapter.

(3) Collective labor contracts excepted.

The provisions of this chapter shall not apply to collective contracts between employers and employees or associations of employees in respect to terms or conditions of employment.

600.5005. Arbitration agreements; real estate

Sec. 5005. A submission to arbitration shall not be made respecting the claim of any person to any estate, in fee, or for life, in real estate, except as provided in Act No. 59 of the Public Acts of 1978, as amended, being



sections 559.101 to 559.272 of the Michigan Compiled Laws. However, a claim to an interest for a term of years, or for 1 year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration.

600.5011. Arbitration agreements; revocation

Sec. 5011. Neither party shall have power to revoke any agreement or submission made as provided in this chapter without the consent of the other party; and if either party neglects to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them upon the evidence produced by the other party. The court may order the parties to proceed with arbitration.

600.5015. Arbitration agreements; appointment





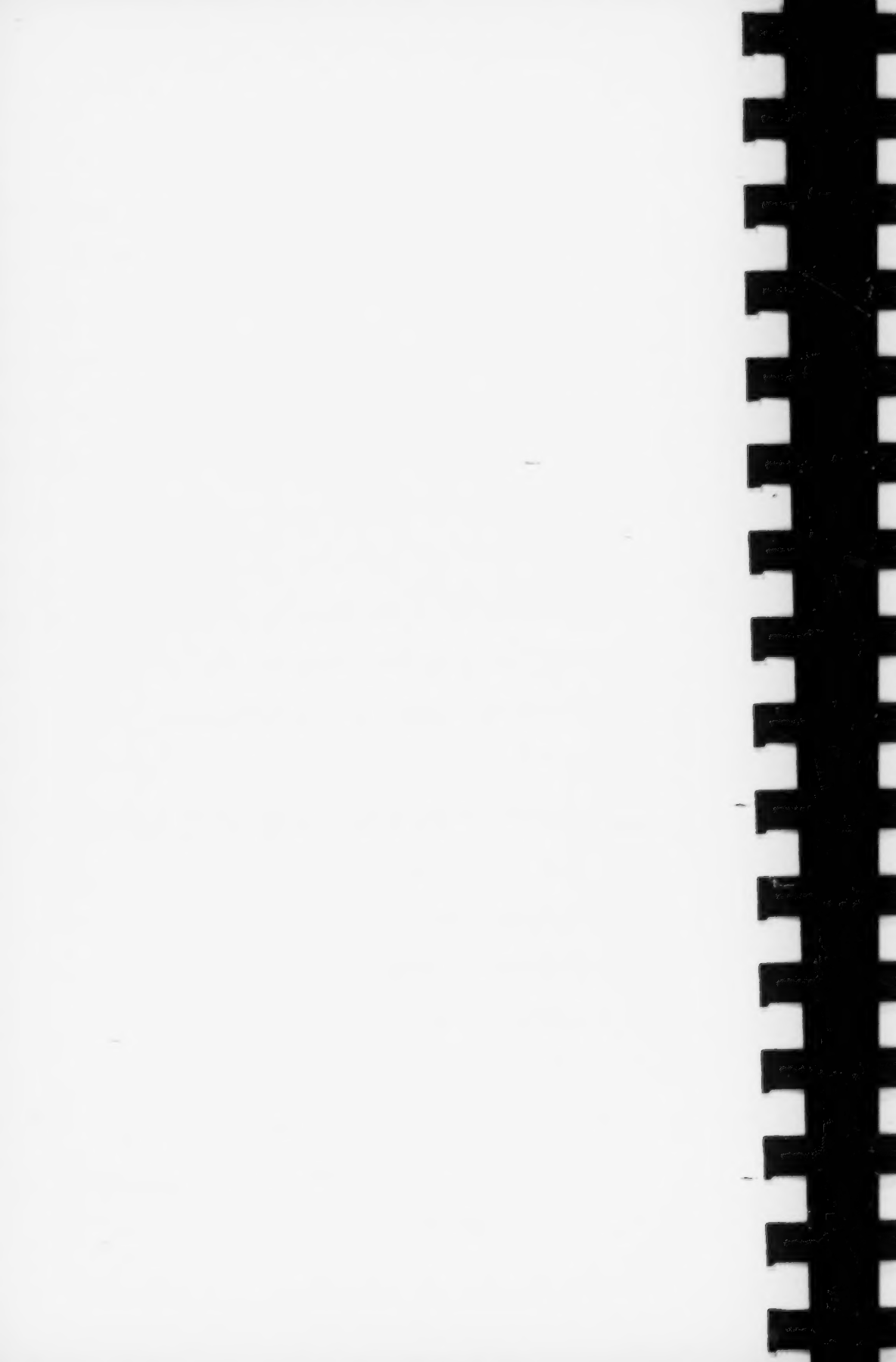
of arbitrators

Sec. 5015. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint 1 or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

600.5021. Arbitration agreements; conduct of arbitration

Sec. 5021. The arbitration shall be conducted in accordance with the rules of the supreme court.

600.5025 Arbitration agreements; circuit courts, enforcement, judgment on award



Sec. 5025. Upon the making of an agreement described in section 5001, the circuit courts have jurisdiction to enforce the agreement and to render judgment on an award thereunder. The court may render judgment on the award although the relief given is such that it could not or would not be granted by a court of law or equity in an ordinary civil action.

600.5031. Arbitration agreements; venue

Section 5031. All proceedings in court under this chapter shall be had in the circuit court of the county provided in the agreement. In the absence of such provision proceedings shall be had

(1) in the circuit court of the county where the adverse party resides or has a place of business, or

(2) if he has no residence or place of business in this state, in the circuit court of



the county where the applicant resides or has a place of business, or

(3) if the arbitration involves real property, in the circuit court of the county in which the property, or any part thereof, is located, or

(4) if neither (1), (2), nor (3) is applicable, in the circuit court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

600.5033. Foreign arbitration awards

Sec. 5033. (1) A court of competent jurisdiction may confirm an arbitration award rendered in another state and enter judgment thereon.

(2) The court may modify, correct, or refuse to confirm the award as provided by law or court rule.

600.5035. Construction of chapter; equity



Sec. 5035. Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the equitable power and authority of any court over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide the award.





APPENDIX E



## MICHIGAN COMPILED LAWS

### § 600.5040 et seq.

#### 600.5040. Arbitrable issues; definitions

Sec. 5040. (1) The provisions of this chapter shall be applicable to the arbitration of a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of professional services by a health care provider, hospital, or their agent, or based on a claimed performance of such services without consent, in breach of warranty, or in violation of contract.

(2) As used in this chapter:

(a) "Association" means the American arbitration association or other entity organized to arbitrate disputes pursuant to this chapter.

(b) "Health care provider" means a person, partnership, or corporation lawfully engaged in the practice of medicine, surgery, dentistry, podiatry, optometry, chiropractic,



nursing, or a person dispensing drugs or medicines.

(c) "Hospital" means a person, partnership, or corporation lawfully engaged in the operation of a hospital, clinic, health maintenance organization, or a sanitarium.

600.5041. Agreements to arbitrate; health care providers

Sec. 5041. (1) A person who receives health care from a health care provider may, if offered, execute an agreement to arbitrate a dispute, controversy, or issue arising out of health care or treatment by a health care provider who is not an employee of a hospital.

(2) The agreement to arbitrate shall provide that its execution is not a prerequisite to health care or treatment.

(3) The agreement shall provide that the person receiving health care treatment or his legal representative may revoke the agreement within 60 days after execution by notifying the



health care provider in writing. A health care provider may not revoke the agreement after its execution.

(4) An agreement under this section shall expire 1 year after its execution and may be renewed by execution of a new agreement.

(5) The agreement shall contain the following provision in 12-point boldface type immediately above the space for signature of the parties: "This agreement to arbitrate is not a prerequisite to health care or treatment and may be revoked within 60 days after execution by notification in writing".

(6) The form of the agreement promulgated shall be accompanied by an information brochure which clearly details the agreement and revocation provision. The brochure shall be furnished the person receiving health care at the time of execution. The person receiving health care shall be furnished with either an original or duplicate original of the agreement.





(7) An agreement to arbitrate which includes the provisions of this section shall be presumed valid.

600.5042. Agreements to arbitrate, hospitals,  
health maintenance organizations

Sec. 5042. (1) A person who receives health care in a hospital may execute an agreement to arbitrate a dispute, controversy, or issue arising out of health care or treatment rendered by the hospital. A person receiving emergency health care or treatment may be offered the option to arbitrate but shall be offered the option after the emergency care or treatment is completed.

(2) The agreement to arbitrate shall provide that its execution is not a prerequisite to health care or treatment.

(3) The agreement to arbitrate shall provide that the person receiving health care or treatment or his legal representative, but not the hospital, may revoke the agreement



within 60 days after discharge from the hospital by notifying the hospital in writing.

(4) The agreement shall contain the following provision in 12-point boldface type immediately above the space for signature of the parties: "This agreement to arbitrate is not a prerequisite to health care or treatment and may be revoked within 60 days after discharge by notification in writing".

(5) Notwithstanding the continuing existence of a health care provider-patient arbitration agreement all surgical and medical procedures performed by a participating health care provider in a hospital shall be covered by the terms and conditions applicable to the agreement between the patient and the hospital. Post-discharge treatment in the health care provider's office subsequent to discharge from such institution will be governed by the terms of any existing health care provider-patient arbitration agreement.



(6) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate but a person receiving outpatient care may execute an agreement with the hospital which provides for continuation of the agreement for a specific or continuing program of health care or treatment under the provisions of section 5041.

(7) The form of the agreement shall be furnished to the person receiving health care or treatment as provided in section 5041(6).

(8) An agreement to arbitrate which includes the provisions of this section shall be presumed valid.

600.5043. Counsel; evidence; witnesses;  
standards; damages

Sec. 5043. (1) In a proceeding pursuant to this chapter:

(a) The parties may be represented by counsel, be heard, present evidence material



to the controversy, and cross-examine any witness.

(b) The prevailing standard of duty, practice, or care applicable in a civil action shall be the standard applied in the arbitration.

(c) Damages or remedial care shall be without limitation as to nature or amount unless otherwise provided by law.

(2) A party may appear without counsel and shall be advised of such right and the right to retain counsel in a manner calculated to inform the person of the nature and complexity of a proceeding by a simple concise form to be distributed by the association administering the arbitration.

600.5044. Costs; arbitrators

Sec. 5044. (1) The association shall administer a proceeding without charge to the claimant. The administrative expense shall be \$200.00 per party per case, or as may be





agreed by the parties and the association, or as may be approved by the commissioner of insurance pursuant to law. The administrative costs on account of a claimant shall be defrayed by the arbitration administration fund established under the insurance code or shall be provided by the respondent parties.

(2) An arbitration under this chapter shall be heard by a panel of 3 arbitrators. One shall be an attorney who shall be the chairperson and shall have jurisdiction over prehearing procedures, 1 shall be a physician, preferably but not necessarily from the respondent's medical specialty, and the third shall be a person who is neither a license of the health profession involved, a lawyer, nor a representative of a hospital or an insurance company. If a case involves a hospital only, a hospital administrator may be substituted for a physician. If a case involved health care provider other than a physician, a licensee of



the health profession involved shall be substituted for a physician.

(3) Except as otherwise provided in subsection (6), arbitrator candidates shall be selected pursuant to the rules and procedures of the association from a pool of candidates generated by the association. The rules and procedures of the association pertaining to selection of arbitrators under this chapter shall require that the association send simultaneously to each party an identical list of 5 arbitrator candidates in each of the 3 categories together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned to the association, they shall be compared and the first mutually agreeable candidate in each category shall be invited to serve.



(4) Where no mutually agreed upon arbitrator is selected for any category, a second list of that category shall be sent pursuant to subsection (3).

(5) If a complete panel is not selected by mutual agreement of the parties pursuant to subsections (3) and (4), then under the applicable rules and procedures of the association the association shall appoint the remainder of the panel on whom agreement has not been reached by the parties. The appointment by the association shall be subject to challenge by any party for cause, which challenge may allege facts to establish that unusual community or professional pressure will unreasonably influence the objectivity of the panelist. A request to strike an arbitrator for cause shall be determined by the regional director or comparable officer of the association or as may be provided by rule of the commissioner of insurance pursuant to law.



(6) The parties shall not be restricted to the arbitrator candidates submitted for consideration. If all parties mutually agree upon a panelist within a designated category, the panelist shall be invited to serve.

600.5045. Bias screening and questioning of,  
and communications with, arbitrator  
candidates

Sec. 5045. (1) The association shall make an initial screening for bias as may be appropriate and shall require a candidate for a particular case to complete a current personal disclosure statement under oath. In addition to other relevant information the statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of such acquaintance. If the statement reveals facts which suggest the possibility of partiality, the association shall communicate those facts to the parties if the panelist is proposed by the arbitration association.





(2) Any party may propound reasonable questions to an arbitrator candidate if such questions are propounded within 10 days of the receipt of the candidate's name. Such questions shall be propounded through the association and the candidate shall respond to the association promptly.

(3) A party shall not communicate with a candidate directly or indirectly except through the association at any time after the filing of the demand for arbitration. Any candidate who is aware of such communication shall immediately notify the association.

600.5046. Demand for arbitration; minors;  
consolidation of proceedings; joinder  
of parties

Sec. 5046. (1) A party to the arbitration agreement may demand arbitration of a claim and the proceeding shall be instituted as provided by rule of the association and upon compliance with section 5044.



(2) A minor child shall be bound by a written agreement to arbitrate disputes, controversies, or issues upon the execution of an agreement on his behalf by a parent or legal guardian. The minor child may not subsequently disaffirm the agreement.

(3) In cases involving a common question of law or fact, if separate arbitration agreements exist between a plaintiff and a number of defendants or between defendants, the disputes, controversies, and issues shall be consolidated into a single arbitration proceeding.

(4) A person who is not a party to the arbitration may join in the arbitration at the request of any party with all the rights and obligations of the original parties. Each party to an arbitration under this chapter is deemed to be bound by the joinder of a new party.

600.5047. Reparation offers; denials of liability



Sec. 5047. (1) Prior to the institution of a proceeding or claim by a patient, any offer of reparations and all communications incidental thereto made in writing to a patient by a health care provider or hospital is privileged and may not be used by any party to establish the liability or measure of damages attributable to the offeror.

(2) Such an offer shall provide that a patient has 30 days to accept or reject the offer, or such lesser period of time as may be necessitated by the condition of health of the patient.

(3) After any rejection or the lapse of the applicable time, any party may demand arbitration, where an arbitration agreement is in effect.

(4) Any such offer to a patient shall include a statement that the patient may consult legal counsel before rejecting or accepting the offer.



(5) In a case where a potential claim is identified by a health care provider or hospital where reparations, in its judgment, are not appropriate, the provider may, at its option, file a demand for arbitration which demand shall identify the potential claim and deny liability.

600.5048. Depositions; discovery; length of proceeding

Sec. 5048. (1) After the appointment of the panel of arbitrators, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration, and, to that end, use and exercise the same rights, remedies, and procedures, and be subject to the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as if the subject matter of the arbitration were pending in a civil action before a circuit court of this state.





(2) The panel shall conclude the entire proceeding as expeditiously as possible.

(3) Discovery shall commence not later than 20 days after all parties have received a copy of the demand for arbitration and shall be completed within 6 months.

(4) A party may be granted an extension of time to complete discovery upon a showing that the extension is not the result of neglect and that the extension is necessary in order to avoid substantial prejudice to the rights of the party.

600.5049. Expert witnesses

Sec. 5049. (1) A party is entitled to disclosure of the name of any expert witness who will be called at the arbitration and may depose the witness.

(2) Any party may also provide discovery of that party's expert witness by the written interrogatory procedure provided in rule 26(b)(4)(a) of the federal rules of civil



procedure. A party may disclose without request or shall disclose, upon request, the name of each expert the party expects to call at the hearing, the subject matter on which the expert will testify, the substance of facts and opinions to which the expert will testify, and a summary of the grounds for each opinion.

(3) If a party is provided or requests the discovery procedure in subsection (2) and the provision or request occurs prior to the date on which an expert is noticed for deposition or other discovery is commenced under prevailing civil practice in this state, any further discovery of the expert by any other party by deposition or otherwise shall obligate the other party to compensate the expert for his time and expenses in a reasonable amount as may be determined by the panel.



600.5050. Hearing, evidence, record, expert  
testimony, burden of proof, neutral  
experts

Sec. 5050. (1) A hearing shall be informal and the rules of evidence shall be as provided under the rules of the association except that the panel shall adhere to civil rules of evidence where the failure to do so will result in substantial prejudice to the rights of a party.

(2) Testimony shall be taken under oath and a record of the proceedings shall be made by a tape recording. Any party, at that party's expense, may have transcriptions or copies of the recording made or may provide for a written transcript of the proceedings. The cost of any transcription ordered by the panel for its own use shall be deemed part of the cost of the proceedings.

(3) Expert testimony shall not be required but where expert testimony is sued it shall be admitted under the same circumstances



as in a civil trial and be subject to cross-examination.

(4) The party with the burden of establishing a standard of care and breach thereof shall establish such standards whether by the introduction of expert testimony, or by other competent proof of the standard and the breach thereof, which may include the use of work as provided in subsection (5).

(5) Authoritative, published works on the general and specific subjects in issue may be admitted and argued from, upon prior notice to all other parties.

(6) The panel shall accord such weight and probative worth to expert evidence as it deems appropriate. The panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The cost of the expert shall be deemed a cost of the proceeding.

600.5051. Subpoenas





Sec. 5051. (1) The panel or its chairperson in the arbitration proceeding shall, upon application by a party to the proceeding, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding, and to produce books, records, or papers pertinent to the proceeding. In case of disobedience to the subpoena, the chairperson or a majority of the arbitration panel in the arbitration proceeding may petition the circuit court of the county in which the witness resides or the circuit court of the county in which the inquiry is being held to require the attendance and testimony of the witness and the production of books, papers, and documents. A circuit court of the state, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear and to produce books, records, and papers and give evidence touching the matter in question. Failure to obey the



order of the court may be punished by the court as contempt.

600.5052. Depositions for evidence, not discovery; discovery, enforcement

Sec. 5052. (1) On application of a party to the arbitration, the panel or its chairperson may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if exceptional circumstances exist making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of the witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law or court rule for the taking of depositions in civil actions.

(2) In addition to the power of determining the merits of the arbitration, the panel may enforce the rights, remedies, procedures,



duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as may be imposed in like circumstances in a civil action by a circuit court of this state, except the power to order the arrest or imprisonment of a person.

(3) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of a duty, a party shall be deemed to include every affiliate of the party as defined in this section. For that purpose the personnel of an affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of that party to the same degree as each of them, respectively, bears that status of the affiliate; and the files, books, and



records, of an affiliate shall be deemed to be in the possession and control of, and capable of production by, the party.

(4) As used in this section, "affiliate" of the party to the arbitration means and includes a party or person for whose immediate benefit the action or proceeding is prosecuted or defended or an officer, director, superintendent, member, agent, employee, or managing agent of that party or person.

600.5053. Witnesses' fees and mileage; arbitrators' fees and expenses

Sec. 5053. -(1) Except for the parties to the arbitration and their agents, officers, and employees, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the circuit court. The fee and mileage of a witness subpoenaed upon the application of a party to the





arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel of arbitrators shall be paid in the manner provided for the payment of the arbitrator's expenses.

(2) The cost of each arbitrator's fees and expenses, together with any administrative fee, may be assessed against any party in the award or may be assessed among parties in such proportions as may be determined in the arbitration award.

600.5054. Relief; briefs; award; opinion

Sec. 5054. (1) A majority of the panel of arbitrators may grant any relief deemed equitable and just, including money damages, provision for hospitalization, medical, or rehabilitative procedures, support, or any combination thereof.

(2) The panel may order submission of written briefs with 30 days after the close of



hearings. In written briefs each party may summarize the evidence in testimony and may propose a comprehensive award of remedial or compensatory elements.

(3) The panel shall render its award and opinion within 30 days after the close of the hearing or the receipt of briefs, if ordered.

(4) The award in the arbitration proceeding shall be in writing and shall be signed by the chairperson or by the majority of a panel of arbitrators. The award shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy, or issue.

600.5055. Form and contents of opinions;  
degree of fault; schedule of contributions

Sec. 5055. (1) In addition to the award the panel shall render a written opinion which states its reasoning for the finding of liability or nonliability, and the reasoning for the



amount and kind of award if any. A panel member who disagrees with the majority may write a dissenting opinion.

(2) The panel shall determine the degree to which each respondent party was at fault for the total damages accruing to any other party to the arbitration, considering all sources of damage involving parties to the arbitration, but excluding the damages attributable to persons not parties to the arbitration.

(3) The panel shall prepare a schedule of contributions according to the relative fault of each party which schedule shall be binding as between those parties, but such determination shall not effect a claimant's right to recover jointly and severally from all parties where such right otherwise exists in the law.

600.5056. Noncash award elements' cash  
awards, lump sum payments



Sec. 5056. (1) In the case of an award, any element of which includes remedial services, contracts, annuities, or other noncash award element, the panel shall determine the current cash value of each element of the award and shall also determine a total current cash value of the entire award.

(2) An award of remedial surgery or care shall not require that the patient undergo such treatment or care by the health care provider whose conduct resulted in the award.

(3) A claimant need not accept the benefits of an award for remedial surgery or other noncash award element and such refusal shall not affect the claimant's right to receive any other part of the award, nor shall the refusal entitle the claimant to payment of the current cash value of the portion refused except as provided in subsections (4) and (5).

(4) Where the total determined current cash value of the entire award is \$50,000.00 or less, any party may satisfy or request





satisfaction of all or a designated part of an award by payment in a lump sum of the current cash value of the total award or part of the award so designated.

(5) Where the total determined current cash value of the entire award is greater than \$50,000.00 the award shall provide that at least 1/3, unless otherwise stipulated by the parties, of its total current cash value shall be payable in a cash lump sum, which payment may represent the current cash value of remedial elements of the award or other compensable damages.

#### 600.5057. Review

Sec. 5057. An appeal from the arbitration award shall be under the procedure and for the grounds permitted under the general arbitration law and applicable court rules.



600.5058. Conflicts with general arbitration provisions

Sec. 5058. In an arbitration proceeding under this chapter, the provisions of those sections shall govern if a conflict arises between those sections and chapter 50.

600.5059. Copies of arbitration demands and decisions, insurance bureau and licensing board

Sec. 5059. The association shall transmit to the state insurance bureau and the applicable licensing board of any respondent party a copy of the demand for arbitration within 10 days of filing. The agencies shall receive a copy of the decision of the panel within 10 days of transmission to the parties. The reports shall be filed for informational purposes and the making or filing of such a report shall not of itself be a ground for discipline.



600.5065. Joint legislative committee, review of  
arbitration operation

Sec. 5065. Within 3 years from the effective date of this chapter, a joint legislative committee shall be established to review the operation and experience of arbitration under this chapter in conjunction with the insurance commissioner, the arbitration advisory committee established under the insurance code, and other interested persons. The committee shall report recommendations for statutory changes, if any, to the entire legislature before the end of the fourth year from the effective date of this chapter.



APPENDIX F





UNITED STATES OF AMERICA  
STATE OF (SEAL) MICHIGAN  
MICHIGAN DEPARTMENT OF COMMERCE  
Lansing, Michigan

This is to Certify That the Annexed Copy of  
Articles of Incorporation, Certificate of  
Assumed Name, Amendment and 1981 thru 1983  
Michigan Annual Reports of MEDIATION TRI-  
BUNAL ASSOCIATION, INC.

has been compared by me with the record on  
file in this Department and that the same is a  
true copy thereof, and the whole of such  
record.

In testimony whereof, I have here-  
under set my hand and affixed the  
Seal of the Department, in the City  
of Lansing, this 7th day of May,  
1984.

Ralph J. \_\_\_\_\_, Director



MICHIGAN DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU

FILED

NOV 16 1979

\_\_\_\_\_  
Director

Michigan Department of Commerce

Corporation Number 704-859

(Non-Profit Domestic Corporations)

ARTICLES OF INCORPORATION

These Articles of Incorporation are signed by the incorporators for the purpose of forming a non-profit corporation pursuant to the provisions of Act 327, Public Acts of 1931, as amended, and Act 284, Public Acts of 1972, as amended, as follows:

ARTICLE I.

The name of the corporation is MEDIATION TRIBUNAL ASSOCIATION, INC.

ARTICLE II.



The purpose or purposes for which the corporation is organized are as follows:

To mediate cases referred to the association by the courts of law, to provide mediators, and for other related purposes.

To receive fees for the purpose of providing mediation services, and to pay the necessary expenses connected therewith.

To exercise all the powers conferred upon corporations formed under the laws of the State of Michigan for "Non-Profit Corporations" in order to accomplish its purposes.

### ARTICLE III.

Said corporation is organized upon a non-stock basis.

(a)

(If upon a stock-share basis fill in the following)

The total number of shares of stock which the corporation shall have authority to issue is \_\_\_\_\_ of the par value of \$ \_\_\_\_\_ per share.



A statement of all or any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof is as follows: \_\_\_\_\_

---

(b)

(If upon a non-stock basis strike out paragraph (a) above and fill in the following)

The amount of assets which said corporation possesses is:

\*Real Property: None

\*Personal Property: None

\*(Give description and value. If none, insert "none")

Said corporation is to be financed under the following general plan:

By receiving fees for mediation purposes.

#### ARTICLE IV.

(1) The address of the initial registered office is (See part 2 of Instructions)

3250 Guardian Bldg. Detroit, Michigan 48226.





(2) The mailing address of the initial registered office is (need not be completed unless different from the above address--See part 2 of Instructions)

\_\_\_\_\_ Michigan \_\_\_\_\_  
(No and street) (Town or City) (zip)

(3) The name of the initial resident agent at the registered office is

SAMUEL A. GARZIA

#### ARTICLE V.

The names and address of the incorporators are as follows:

(At least 3 incorporators are required. See Part 3 of instructions)

Sheldon L. Miller, 547 E. Jefferson, Detroit,  
Michigan 48226

Samuel A. Garzia, 3250 Guardian Bldg.,  
Detroit, Michigan 48226

Richard D. Dunn, 1801 City-County Bldg.,  
Detroit, Michigan 48226

#### ARTICLE VI.



The names and addresses of the first board of directors (or trustees) are as follows

(At least 3 directors or trustees are required.  
See Part 3 of Instructions)

Sheldon L. Miller, 547 E. Jefferson, Detroit,  
Michigan 48226

Samuel A. Garzia, 3250 Guardian Bldg.,  
Detroit, Michigan 48226

Richard D. Dunn, 1801 City-County Bldg.,  
Detroit, Michigan 48226

#### ARTICLE VII.

(Here insert any desired additional provisions  
authorized by the Acts)

#### SEE ATTACHED PROVISIONS

We, the Incorporators of the above named  
corporation, hereby sign these Articles of  
Incorporation on this 24 day of October, 1979.

\_\_\_\_\_  
/s/

Sheldon L. Miller

\_\_\_\_\_  
/s/

Samuel A. Garzia



Richard D. Dunn

## INFORMATION AND INSTRUCTIONS

### Articles of Incorporation-Non-Profit Corporations

#### (Excluding Ecclesiastical Corporations)

1. Article II should state, in general terms, the specific purpose or object for which the corporation is organized.
2. Article IV - A post office box is not permitted to be designated as the address of the registered office in part 1 of Article IV.
3. Article V - At least three incorporators are required. Article VI - At least three directors (or trustees) are required. The addresses should include a street number and name (or other designation), in addition to the name of the city and state.



4. The duration of the corporation should be stated in the Articles only if the duration is not perpetual.
5. The Articles must be signed in ink by each incorporator. The names of the incorporators as set out in Article V should correspond with the signatures.
6. An effective date, not later than 90 days subsequent to the date of filing, may be stated in the Articles of Incorporation.
7. One original copy of the Articles is required. A true copy will be returned by the Corporation and Securities Bureau to the person submitting the Articles for filing.
8. FEES: \$10.00 filing plus \$10.00 franchise; total \$20.00. Checks or money orders should be made payable to the State of Michigan.
9. Mail Articles of Incorporation and fees to:  
Michigan Department of Commerce  
Corporation and Securities Bureau





Corporation Division

P.O. Box 30054

Lansing, Michigan 48909



ARTICLES VII OF ARTICLES OF INCORPORATION FOR MEDIATION TRIBUNAL ASSOCIATION, INC.

PROHIBITIONS

At all times, and notwithstanding any change in name, merger, consolidation, reorganization, termination, dissolution, or winding up of this Corporation, voluntary or involuntary, or by operation of law, or any other provisions hereof:

(a) The corporation shall not possess or exercise any power or authority either expressly, by interpretation, or by operation of law that will prevent it at any time from qualifying and continuing as a Corporation described in Section 501(c)(4), or other sections, of the Internal Revenue Code of 1954, as amended, hereinafter referred to as the Code; nor shall it engage directly or indirectly in any activity which would cause the loss of such qualification.



(b) No part of the assets or net earnings of the Corporation shall ever be used, nor shall the Corporation ever be organized or operated for purposes that do not exclusively promote social welfare within the meaning of Section 501(c) (4), or other sections, of the Code.

(c) The Corporation shall never be operated for the primary purpose of carrying on a trade or business for profit.

(d) At no time shall the Corporation engage in any activities which are unlawful under the laws of the United States of America, the State of Michigan, or any other jurisdiction where its activities are carried on.

(e) No compensation, loan, or other payment shall be paid to any officer, board member, creator, or organizer of the Corporation, or substantial contributor to it, except as reasonable compensation for services rendered and/or as a reasonable compensation for authorized expenditures incurred on behalf of



the Corporation; and no part of the assets or net earnings, current or accumulated, of the Corporation shall ever be distributed to or divided among such person, or inure, be used for, accrue to or benefit any such person or private individual.

#### DISSOLUTION

Upon the termination, dissolution, or winding up of the Corporation in any manner or for any reason, its assets, if any, remaining after payment (or provision for payment) of all liabilities of the Corporation, shall be distributed to, and only to, one or more organizations having either exclusively charitable, religious, scientific, or educational purposes or a primary purpose to promote social welfare or only for exempt purposes as described in Sections 501(c)(3) and (4), or other sections, of the Code.

#### MEMBERSHIP

The Corporation shall have members, as provided in the Bylaws.





### CAPITALIZATION

The Corporation shall issue no capital stock.

### DIRECTORS

Except for the initial Board of Directors, whose names are set forth in these Articles of Incorporation, the Board of Directors shall be elected or appointed as provided in the By-laws.

### BY-LAWS

Provisions for the regulation of the internal affairs of the Corporation, except as provided in these Articles, shall be determined and fixed by the Bylaws as adopted by the Board of Directors.



MICHIGAN DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
FILED

NOV 16 1979

/s/ DIRECTOR

MICHIGAN DEPARTMENT OF COMMERCE  
EXPIRATION DATE: December 31, 1984  
CERTIFICATE OF ASSUMED NAME  
(For Use by Domestic and Foreign Corporations)  
(See Instructions on Reverse Side)

Pursuant to the provisions of Section 217,  
Act 284, Public Acts of 1972, as amended, the  
undersigned corporation executes the following  
Certificate:

1. The true name of the corporation is ME-  
DIATION TRIBUNAL ASSOCIATION, INC.
2. The location of the registered office in  
Michigan is 3250 Guardian Bldg., Detroit,  
Michigan 48226.
3. The assumed name under which the busi-  
ness is to be transacted is MEDIATION TRI-  
BUNAL ASSOCIATION.



Signed this 16th day of October, 1979.

By \_\_\_\_\_ /s/ \_\_\_\_\_

Sheldon L. Miller, President



MICHIGAN DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU

FILED

NOV 8-1982

Administrator

MICHIGAN DEPARTMENT OF COMMERCE  
Corporation & Securities Bureau

(See Instructions on Reverse Side)

For Use by Domestic and Foreign Corporations  
CERTIFICATE OF CHANGE OF REGISTERED OFFICE  
AND/OR CHANGE OF RESIDENT AGENT

Insert Corporation Identification Number  
704-859

This certificate is executed with the provisions  
of Section 242 of Act 284, Public Acts of 1972,  
as amended, as follows:

1. The name of the corporation is ME-  
DIATION TRIBUNAL ASSOCIATION, INC.
2. The address of its registered office as  
currently on file with the Corporation and  
Securities Bureau is 3250 Guardian Building,  
Detroit, Michigan 48226.





The mailing address of its registered office is: (Complete only if different from above address. See Part 3 of Instructions)

---

3. (Complete if the address of the registered office is changed.)

The address of the registered office is changed to: (See Part 3 of Instructions)

333 W. Fort Street, Suite 1600, Detroit, Michigan 48226.

The mailing address of the registered office is changed to: (Complete only if different from above address. See Part 3 of Instructions)

---

4. The name of the resident agent as currently on file with the Corporation and Securities Bureau is (See Part 4 of instructions)  
Samuel A. Garzia.

5. (Complete if the resident agent is changed.)



The name of the successor resident agent  
is \_\_\_\_\_.

6. The corporation further states that the address of its registered office and the address of the business office of its resident agent, as changed, are identical.

7. The changes designated above were authorized by resolution duly adopted by its board of directors or trustees.

Signed this 21st day of Oct, 1982.

By \_\_\_\_\_ /s/ \_\_\_\_\_

Sheldon L. Miller, President



1980 MICHIGAN ANNUAL REPORT

NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1980.

This report is submitted in accordance with the provisions of Section 81, Act 327, P.A. 1931, as amended, as follows:

This Return Must be Filed on or before October 1, 1980 . Corporate Number 704859

1. Corporate Name-Mailing Address-No.,  
Street, City, Zip  
Mediation Tribunal Association, Inc.  
3250 Guardian Bldg.  
Detroit, MI 48226
2. Resident Agent  
SAMUEL A. GARZIA
3. Registered Office Address in Michigan-  
No., Street, City, Zip.  
3250 GUARDIAN BLDG.  
DETROIT, MI 48226
4. Federal Employer No.
5. Term of Existence (if not perpetual)  
PERPETUAL



6. The Act Under Which Incorporated (If other than Act 327, P.A. of 1931, as amended)

284, 1972 327, 1931.

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers: Name, Address, City, State, Zip (Each Officer line must be completely filled out)

President SHELDON L. MILLER, 547 E. Jefferson, Detroit, Mich. 48226

Vice President NONE

Secretary SAMUEL A. GARZIA, 3250 Guardian Bldg., Det., MI 48226

Treasurer SAMUEL A. GARZIA, 3250 Guardian Bldg., Det., MI 48226

11. Names & complete addresses of all directors (or trustees). Statute requires at





least 3. (If space insufficient attach separate sheet.)

SHELDON L. MILLER, 547 E. JEFFERSON,  
DETROIT, MI 48226

SAMUEL A. GARZIA, 3250 GUARDIAN  
BLDG., DET., MI 48226

RICHARD D. DUNN, 1801 CITY-COUNTY  
BLDG., DET., MI 48226

12. The purposes of the corporation: Assistant or aid to the Wayne County Circuit Courts.
13. The authorized capital stock, if any, is  
\$ \_\_\_\_\_ par value \$ \_\_\_\_\_  
each.
14. The value of all real and personal property and cash owned at time of filing this report: \$25,000.00.
15. The nature and kind of business in which the corporation has engaged during the year covered by this report: Mediation Services.



16. What, if any, distribution of funds has been made to any members during the year covered by this report: None.
17. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or sharehold-ers of the corporation otherwise than in the ordinary and usual course of business and on the ordinary and usual terms of payment and security at the time of filing. NONE.

By \_\_\_\_\_ /s/

SHELDON L. MILLER, Pres.

Date signed 8-5-80



1981 MICHIGAN ANNUAL REPORT

NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1981.

This report is submitted in accordance with the provisions of Section 81, Act 327, P.A. 1931, as amended, as follows:

This Return Must be Filed on or before October 1, 1981 - Corporate Number 704859

1. Corporate Name-Mailing Address-No.,  
Street, City, Zip  
Mediation Tribunal Association, Inc.  
1115 Lafayette Bldg.  
Detroit, MI 48226
2. Resident Agent  
SAMUEL A. GARZIA
3. Registered Office Address in Michigan-  
No., Street, City, Zip.  
3250 GUARDIAN BLDG.  
DETROIT, MI 48226
4. Federal Employer No.  
38-2278101
5. Term of Existence (if not perpetual)



PERPETUAL

6. The Act Under Which Incorporated (If other than Act 327, P.A. of 1931, as amended)

284, 1972 327, 1931.

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers: Name, Address, City, State, Zip (Each Officer line must be completely filled out)

President SHELDON L. MILLER, 547 E. Jefferson, Detroit, Mich. 48226

Vice President NONE

Secretary SAMUEL A. GARZIA, 3250 Guardian Bldg., Det., MI 48226

Treasurer SAMUEL A. GARZIA, (SAME)

11. Names & complete addresses of all directors (or trustees). Statute requires at





least 3. (If space insufficient attach separate sheet.)

SHELDON L. MILLER, 547 E. JEFFERSON,  
DETROIT, MI 48226

SAMUEL A. GARZIA, 3250 GUARDIAN  
BLDG., DET., MI 48226

HON. RICHARD D. DUNN, 1801 CITY-  
COUNTY BLDG., DET., MI 48226

12. The purposes of the corporation: Assistant or aid to the Wayne County Circuit Courts.
13. The authorized capital stock, if any, is \$ NONE par value \$ NONE each. As at end of last fiscal year ended on 9/30/80
14. The value of all real and personal property and cash owned at time of filing this report: \$280,000.00.
15. The nature and kind of business in which the corporation has engaged during the year covered by this report: Mediation Services and services for the courts.



16. What, if any, distribution of funds has been made to any members during the year covered by this report: None.
17. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business and on the ordinary and usual terms of payment and security at the time of filing. NONE.

By \_\_\_\_\_ /s/ \_\_\_\_\_

SHELDON L. MILLER, Pres.

Date signed \_\_\_\_\_



1982 MICHIGAN ANNUAL REPORT  
NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1982.

This report is submitted in accordance with the provisions of Section 81, Act 327, P.A. 1931, as amended, as follows:

This Return Must be Filed on or before October 1, 1982 . Corporate Number 704859

1. Corporate Name-Mailing Address-No.,  
Street, City, Zip  
Mediation Tribunal Association, Inc.  
1115 Lafayette Bldg.  
Detroit, MI 48226
2. Resident Agent  
SAMUEL A. GARZIA
3. Registered Office Address in Michigan-  
No., Street, City, Zip.  
333 W. Fort Street, Suite 1600  
Detroit, Michigan 48226
4. Federal Employer No.  
38-2278101
5. Term of Existence (if not perpetual)



PERPETUAL

6. The Act Under Which Incorporated (If other than Act 327, P.A. of 1931, as amended)

284, 1972 327, 1931.

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers: Name, Address, City, State, Zip (Each Officer line must be completely filled out)

President SHELDON L. MILLER, 547 E. Jefferson, Detroit, Mich. 48226

Vice President NONE

Secretary SAMUEL A. GARZIA, 333 W. Fort Street, Suite 1600, Detroit, MI 48226

Treasurer SAMUEL A. GARZIA, 333 W. Fort Street, Suite 1600, Detroit, MI 48226

11. Names & complete addresses of all directors (or trustees). Statute requires at





least 3. (If space insufficient attach separate sheet.)

Same as above.

12. The authorized capital stock, if any, is \$ NONE par value \$ \_\_\_\_\_ each.
13. The purposes of the corporation: Assistant or aid to the Courts.
14. The value of all real and personal property and cash owned at time of filing this report: \$560,000.00.
15. The nature and kind of business in which the corporation has engaged during the year covered by this report: Mediation Services for the courts.
16. What, if any, distribution of funds has been made to any members during the year covered by this report: None.
17. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in



the ordinary and usual course of business  
and on the ordinary and usual terms of  
payment and security at the time of  
filing. NONE.

By \_\_\_\_\_ /s/ \_\_\_\_\_

SHELDON L. MILLER, Pres.

Date signed 10-21-82



1983 MICHIGAN ANNUAL REPORT

NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1983.

This report is submitted in accordance with the provisions of Section 911, Act 162, Public Acts of 1982, as follows:

This Return Must be Filed on or before October 1, 1983 - Corporate Number 704859

1. Corporate Name

Mediation Tribunal Association, Inc.

333 W. Fort St., Ste 1600

Detroit, MI 48226

2. Resident Agent

SAMUEL A. GARZIA

3. Registered Office Address in Michigan-  
No., Street, City, Zip.

333 W. Fort Street, Suite 1600

Detroit, Michigan 48226

4. Federal Employer No.

382278101

5. Term of Existence (if not perpetual)

PERPETUAL



6. The Act Under Which Incorporated (If other than 1931, P.A. 327, as amended, or 1982, P.A. 162)

284-1972

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers: Name, Street and Number, City, State Zip Code

President Sheldon L. Miller, 547 E. Jefferson Ave., Detroit, MI. 48226

Secretary Samuel A. Garzia, 333 W. Fort Street, Suite 1600, Detroit, MI 48226

Treasurer Same as Secretary

Vice President (if any) Richard D. Dunn, 1201 City County Bldg., Detroit, MI. 48226

11. Corporate Directors (if different than officers): Include Name, Street and Number, City, State, and Zip Code





Same as above

12. The authorized capital stock, if any, is \$  
None par value \$ \_\_\_\_\_ each.
13. The purposes of the corporation: To aid  
the Courts and provide a mediation pro-  
cess for litigants.
14. The value of all real and personal proper-  
ty and cash owned at time of filing this  
report: \$350,000.00.
15. The nature and kind of business in which  
the corporation has engaged during the  
year covered by this report: Mediation  
of Wayne County and Federal Court  
cases.
16. What, if any, distribution of funds has  
been made to any members during the  
year covered by this report: None.
17. A statement of the aggregate amount of  
any loans, advances, overdrafts and/or  
withdrawals and repayments thereof made  
to or by officers, directors or sharehold-  
ers of the corporation otherwise than in



the ordinary and usual course of business  
and on the ordinary and usual terms of  
payment and security at the time of  
filing. NONE.

By \_\_\_\_\_ /s/

Samuel A. Garzia

Secretary/Treasurer

Date signed August 12, 1983



1984 MICHIGAN ANNUAL REPORT

NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1984.

This report is required in accordance with the provisions of Section 911, Act 162, Public Acts of 1982 - Penalties may be assessed under the Act for failure to file.

This Return Must be Filed on or before October 1, 1984      Corporate Number 704859

1.    Corporate Name

Mediation Tribunal Association, Inc.

333 W. Fort St., Ste 1600

Detroit, MI 48226

2.    Resident Agent

SAMUEL A. GARZIA

3.    Registered Office Address in Michigan-  
No., Street, City, Zip.

333 W. Fort Street, Suite 1600

Detroit, Michigan 48226

4.    Federal Employer No.

382278101

5.    Term of Existence (if not perpetual)



PERPETUAL

6. The Act Under Which Incorporated (If other than 1931, P.A. 327, as amended, or 1982, P.A. 162)

284-1972

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers: Name, Street and Number, City, State Zip Code

President Sheldon L. Miller, 547 E. Jefferson Ave., Detroit, MI. 48226

Secretary Samuel A. Garzia, 333 W. Fort Street, Suite 1600, Detroit, MI 48226

Treasurer Samuel A. Garzia, 333 W. Fort St., Ste. 1600, Detroit, MI 48226

Vice President

Corporate Directors Same as above, and

Hon. Richard D. Dunn, 1801 City County Bldg., Detroit, MI 48226.





11. The authorized capital stock, if any, is \$  
None, and the number of shares is None.
12. The purposes of the corporation:  
Assistance to the courts.
13. The value of all real and personal property and cash owned at time of filing this report: \$790,118.
14. The nature and kind of business in which the corporation has engaged during the year covered by this report: Mediation for the Courts.
15. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report: None.
16. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business and on the ordinary and usual terms of



payment and security at the time of  
filing. NONE.

By \_\_\_\_\_ /s/

Sheldon L. Miller, President

Date signed 9/13/84



1985 MICHIGAN ANNUAL REPORT

NON-PROFIT CORPORATIONS

This report shall be filed by all non-profit corporations on or before October 1, 1985.

This report is required in accordance with the provisions of Section 911, Act 162, Public Acts of 1982 - Penalties may be assessed under the Act for failure to file.

This Return Must be Filed on or before October 1, 1984      Corporate Number 704859

1. Corporate Name

Mediation Tribunal Association, Inc.

333 W. Fort St., Ste 1600

Detroit, MI 48226

2. Resident Agent

SAMUEL A. GARZIA

3. Registered Office Address in Michigan-  
No., Street, City, Zip.

333 W. Fort Street, Suite 1600

Detroit, Michigan 48226

4. Federal Employer No.

382278101

5. Term of Existence (if not perpetual)



PERPETUAL

6. The Act Under Which Incorporated (If other than 1931, P.A. 327, as amended, or 1982, P.A. 162)

284-1972

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admittance (Foreign corp.)

10. Corporate Officers and Directors: Name,

Street and Number, City, State Zip Code

President Sheldon L. Miller, 547 E.

Jefferson, Detroit, MI. 48226

Secretary Samuel A. Garzia, 333 W. Fort

St., Suite 1600, Detroit, MI 48226

Treasurer Samuel A. Garzia, 333 W. Fort

St., Ste. 1600, Detroit, MI 48226

Vice President

Corporate Directors Same as above, and

Hon. Richard D. Dunn, 1801 City-County

Bldg., Detroit, MI 48226.





11. The authorized capital stock, if any, is \$  
None, and the number of shares is None.
12. The purposes of the corporation:  
Assistance to the courts.
13. The value of all real and personal property and cash owned at time of filing this report: \$553,045.
14. The nature and kind of business in which the corporation has engaged during the year covered by this report: Mediation for the Courts.
15. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report: None.
16. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business and on the ordinary and usual terms of



payment and security at the time of  
filing. NONE.

By \_\_\_\_\_ /s/

Samuel A. Garzia, Sec-Treas

Date signed Sept 30, 1985





*This is to Certify That the Annexed Copy of*

Articles of Incorporation, Certificate of Assumed Name, Amendment and  
1981 thru 1983 Michigan Annual Reports of MEDIATION TRIBUNAL ASSOCIATION, INC.

*has been compared by me with the record on file in this Department and that the  
same is a true copy thereof, and the whole of such record.*

*In testimony whereof, I have hereunto set my  
hand and affixed the Seal of the Department,  
in the City of Lansing, this 7th day  
of May, 1984.*

*Raymond J. Benson Director*



**FILED**

NOV 16 1979

*James H. Haggerty*  
DIRECTOR  
MICHIGAN DEPARTMENT OF COMMERCE

Date Received

OCT 29 1979

Corporation Number

**1704-859**

(SEE INSTRUCTIONS ON REVERSE SIDE)

(Non-Profit Domestic Corporations)

## ARTICLES OF INCORPORATION

These Articles of Incorporation are signed by the incorporators for the purpose of forming a non-profit corporation pursuant to the provisions of Act 327, Public Acts of 1931, as amended, and Act 234, Public Acts of 1972, as amended, as follows:

### ARTICLE I

The name of the corporation is MEDIATION TERMINAL ASSOCIATION, INC.

### ARTICLE II

The purpose or purposes for which the corporation is organized are as follows:  
(See Part I of Instructions)

To mediate cases referred to the association by the courts of law to provide mediators, and for other related purposes.

To receive fees for the purpose of providing mediation services, and to pay the necessary expenses connected therewith.

To exercise all the powers conferred upon corporations formed under the laws of the State of Michigan for "Non-Profit Corporations" in order to accomplish its purposes.





ARTICLE III

NON-STOCK

A statement of the assets of the corporation and the liabilities and net worth of the corporation as of the date of the filing of this certificate is as follows:

(b)

(i) upon a non-stock basis since but paragraph (a) above and fill in the following:

The amount of assets which said corporation possesses is

"Real Property" NONE

"Personal Property" NONE

(Give description and value. If none, insert none)

Said corporation is to be financed under the following general plan:

By receiving fees for mediation purposes

ARTICLE IV.

(1) The address of the initial registered office is (See part 2 of instructions)

3250 Guardian Bldg. Detroit Michigan 48226  
(No. and Street) (Town or City) (Zip Code)

(2) The mailing address of the initial registered office is (need not be completed unless different from the above address—See part 2 of instructions)

Michigan   
(No. and Street) (Town or City) (Zip Code)

(3) The name of the initial resident agent at the registered office is

SAMUEL A. CARZIA



SHELDON L. MILLER

547 E. Jefferson, Detroit, Michigan 48226

SAMUEL A. GARCIA

3250 Guardian Bldg., Detroit, Michigan 48226

RICHARD D. DUNN

1801 City-County Bldg. Detroit, Michigan 48226

ARTICLE VI

The names and addresses of the first board of directors (or trustees) are as follows:  
(At least 3 directors or trustees are required: See Part 3 of Instructions)

Names

Residence or Business Address

SHELDON L. MILLER

547 E. Jefferson, Detroit, Michigan 48226

SAMUEL A. GARCIA

3250 Guardian Bldg., Detroit, Michigan 48226

RICHARD D. DUNN

1801 City-County Bldg. Detroit, Michigan 48226



WIT, THE INCORPORATORS OF THE ABOVE NAMED CORPORATION HEREBY SIGN THESE ARTICLES OF INCORPORATION ON THIS 24 DAY OF

OCTOBER 1979

Sheldon L. Miller  
SHELDON L. MILLER

Samuel A. Ganga  
SAMUEL A. GANGA

Richard D. Dunn  
RICHARD D. DUNN

#### INFORMATION AND INSTRUCTIONS

##### Articles of Incorporation—Non-Profit Corporations (Excluding Ecclesiastical Corporations)

1. Article II should state, in general terms, the specific purpose or object for which the corporation is organized.
2. Article IV—A post office box is not permitted to be designated as the address of the registered office in part 1 of Article IV. The mailing address in part 2 of Article IV may differ from the address of the registered office only if a post office box address in the same city as the registered office is designated as the mailing address.
3. Article V—At least three incorporators are required. Article VI—At least three directors (or trustees) are required. The addresses should include a street number and name (or other designation), in addition to the name of the city and state.
4. The duration of the corporation should be stated in the Articles only if the duration is not perpetual.
5. The Articles must be signed in ink by each incorporator. The names of the incorporators as set out in Article V should correspond with the signatures.
6. An effective date, not later than 90 days subsequent to the date of filing, may be stated in the Articles of Incorporation.
7. One original copy of the Articles is required. A true copy will be returned by the Corporation and Securities Bureau to the person submitting the Articles for filing.
8. FEES: \$10.00 filing plus \$10.00 franchise; total \$20.00. Checks or money orders should be made payable to the State of Michigan.
9. Mail Articles of Incorporation and fees to:

Michigan Department of Commerce  
Corporation and Securities Bureau  
Corporation Division  
P. O. Box 30054



### PROVISIONS

At all times, and notwithstanding any change in name, merger, consolidation, reorganization, termination, dissolution, or winding up of this Corporation, voluntary or involuntary, or by operation of law, or any other provisions hereof:

(a) The Corporation shall not possess or exercise any power or authority either expressly, by interpretation, or by operation of law that will prevent it at any time from qualifying and continuing to qualify as a Corporation described in Section 501(c)(4), or other sections, of the Internal Revenue Code of 1954, as amended, hereinafter referred to as the Code; nor shall it engage directly or indirectly in any activity which would cause the loss of such qualification.

(b) No part of the assets or net earnings of the Corporation shall ever be used, nor shall the Corporation ever be organized or operated for purposes that do not exclusively promote social welfare within the meaning of Section 501(c)(4), or other sections, of the Code.

(c) The Corporation shall never be operated for the primary purpose of carrying on a trade or business for profit.

(d) At no time shall the Corporation engage in any activities which are unlawful under the laws of the United States of America, the State of Michigan, or any other jurisdiction where its activities are carried on.

(e) No compensation, loan, or other payment shall be paid to any officer, board member, creator, or organizer of the Corporation, or substantial contributor to it, except as reasonable compensation for services rendered and/or as a reasonable compensation for authorized expenditures incurred on behalf of the Corporation; and no part of the assets or net earnings, current or accumulated, of the Corporation shall ever be distributed to or divided among such person, or inure, be used for, accrue to or benefit any such person or private individual.

### DISSOLUTION

On the termination, dissolution, or winding up of the Corporation in any manner or for any reason, its assets, if any, remaining after payment (or provision for payment) of all liabilities of the Corporation, shall be distributed to, and only to, one or more organizations having either exclusively charitable, religious, scientific, or educational purposes or a primary purpose to promote social welfare or only for exempt purposes as described in Sections 501(c)(3) and (4), or other sections, of the Code.

### MEMBERSHIP

The Corporation shall have members, as provided in the Bylaws.

### CAPITALIZATION

The Corporation shall issue no capital stock.

### DIRECTORS

Except for the initial Board of Directors, whose names are set forth in these Articles of Incorporation, the Board of Directors shall be elected or appointed as provided in the Bylaws.

### BY-LAWS

Provisions for the regulation of the internal affairs of the Corporation, except as provided in these Articles, shall be determined and fixed by the Bylaws as adopted by

**BEST AVAILABLE COPY**





FILED

NOV 16 1979

DIRECTOR

MICHIGAN DEPARTMENT OF COMMERCE

OCT 29 1979

EXPIRATION DATE

December 31, 1984

# CERTIFICATE OF ASSUMED NAME

(For Use by Domestic and Foreign Corporations)

(See Instructions on Reverse S-04)

Pursuant to the provisions of Section 217, Act 284, Public Acts of 1972, as amended, the undersigned corporation executes the following Certificate:

1. The true name of the corporation is MEDIATION TRIBUNAL ASSOCIATION, INC.

2. The location of the registered office in Michigan is

3250 Guardian Bldg.

Detroit

Michigan

48226

(See Instructions)

3. The assumed name under which the business is to be transacted is

MEDIATION TRIBUNAL ASSOCIATION

Signed this 16<sup>th</sup> day OCTOBER, 1979.

By

Sheldon L. Miller

(Signature of President, Vice-President, Chairman or Other Officer)

SHELDON L. MILLER

(Name as First Name and Last)

PRESIDENT



MICHIGAN DEPARTMENT OF COMMERCE - CORPORATION AND SECURITIES BUREAU

NOV 8 - 1982

ADMINISTRATOR  
MICHIGAN DEPARTMENT OF COMMERCE  
(Incorporation) & Securities Bureau

Date Received

OCT 2 1982

(See Instructions on Reverse Side)  
For Use by Domestic and Foreign Corporations

CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR CHANGE OF RESIDENT AGENT

INSERT CORPORATION IDENTIFICATION NUMBER

7 0 4 — 8 3 9

This certificate is executed in accordance with the provisions of Section 242 of Act 284, Public Acts of 1972, as amended, as follows:

1. The name of the corporation is MEDIATION TRIBUNAL ASSOCIATION, INC.

2. The address of its registered office as currently on file with the Corporation and Securities Bureau is:  
(See Part 2 of instructions) 3250 GUARDIAN BUILDING

1115 Telegraph Road Detroit Michigan 48226  
(City and Street) (Town or City) (State) (Zip Code)

The mailing address of its registered office is: (Complete only if different from above address. See Part 3 of instructions)

3250 Guardian Building Detroit Michigan 48226  
(P.O. Box) (Town or City) (State) (Zip Code)

3. (Complete if the address of the registered office is changed.)  
The address of the registered office is changed to: (See Part 2 of instructions)

333 W. Fort Street, Suite 1600 Detroit Michigan 48226  
(City and Street) (Town or City) (State) (Zip Code)

The mailing address of the registered office is changed to: (Complete only if different from above address. See Part 3 of instructions)

Michigan 48226  
(Town or City) (State) (Zip Code)

4. The name of the resident agent as currently on file with the Corporation and Securities Bureau is  
(See Part 4 of instructions) Samuel A. Garcia

5. (Complete if the resident agent is changed.)  
The name of the successor resident agent is \_\_\_\_\_

6. The corporation further states that the address of its registered office and the address of the business office of its resident agent, as changed, are identical.

7. The changes designated above were authorized by resolution duly adopted by its board of directors or trustees.

Signed this 21<sup>st</sup> day of OCT, 19 82.

By

Sheldon L. Miller  
(Signature of President, Vice-President, Secretary, Treasurer or Clerk, Chairman or Vice-Chairman)

Sheldon L. Miller, President  
(Type or Print Name and Title)

164



SEE INSTRUCTIONS ON  
REVERSE SIDE)

# 1980 MICHIGAN ANNUAL REPORT - NON-PROFIT CORPORATIONS

THIS REPORT SHALL BE FILED BY ALL NON-PROFIT CORPORATIONS ON OR BEFORE OCTOBER 1, 1980. This report is submitted in accordance with the provisions of Section 81, Act 327, P.A. 1931, as amended, as follows:

The Return Must be Filed on or before October 1, 1980

Corporate  
Number 704,850

1 Corporate Name - Mailing Address - No., Street, City, Zip

MEDIATION TRIBUNAL ASSOCIATION, INC  
3250 GUARDIAN BLDG.  
DETROIT MI 48226

FILED FEE \$10.00  
MAKE REMITTANCE PAYABLE TO  
STATE OF MICHIGAN  
RETURN TO  
DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
P.O. BOX 30057  
LANSING, MICHIGAN 48208

2 Resident Agent

SAMUEL A. GARZIA

3 Registered Office Address in Michigan - No., Street, City, Zip

3250 GUARDIAN BLDG.  
DETROIT MI 48226

4 Period of Incorporation

PERPETUAL

5 The Act Under Which Incorporated (i.e. other than Act 327, P.A. of 1931 as amended)

284, 1972 327, 1931

7 State of Incorporation

MI

8 Incorporation Date

11/16/1979

9 Date of Admission (through corp.)

10 Corporate Officers, Name, Address, City, State, Zip

(Each Officer line must be completely filled out)

PRESIDENT SHELDON L. MILLER, 547 E. JEFFERSON, DETROIT, MICH. 48206

VICE PRESIDENT NONE

SECRETARY SAMUEL A. GARZIA 3250 GUARDIAN BLDG. DET. MI. 48206

TREASURER SAMUEL A. GARZIA 3250 GUARDIAN BLDG. DET. MI. 48206

11. Names & complete addresses of all directors (or trustees). Statute requires at least 3. (If more than 3, list all names and addresses.)

SHELDON L. MILLER, 547 E. JEFFERSON, DETROIT, MICH. 48206

SAMUEL A. GARZIA, 3250 GUARDIAN BLDG. DET. MI. 48206

RICHARD D. DUNN - 1801 CITY-COUNTY BLDG. DET. MI. 48206

12 The purposes of the corporation: ASSISTANT DR CID TO THE  
LIVINE COUNTY CIRCUIT COURTS

13. The authorized capital stock, if any, is \$ \_\_\_\_\_, par value \$ \_\_\_\_\_ each.

14. The value of all real and personal property and cash owned at time of filing this report: \$25,000.00

15. The nature and kind of business in which the corporation has engaged during the year covered by this report: MEDIATION SERVICES

16. What, if any, distribution of funds has been made to any members during the year covered by this report: NONE

17 A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing. NONE

BY SHELDON L. MILLER  
(Signature of Chairman, Vice-Chairman, President or Treasurer)

SHELDON L. MILLER

DATE SIGNED 8-5-80









# 1982 MICHIGAN ANNUAL REPORT NON-PROFIT CORPORATIONS

704859

MEDIATION TRIBUNAL ASSOCIATION, INC.  
1115 Lafayette Building  
Detroit, Michigan 48226

Samuel A. Garcia

333 W. Fort Street, Suite 1600  
Detroit, Michigan 48226

36-2276101

Perpetual

284, 1972

327, 1931

Michigan

11/16/1979

0 Corporate Officers Name Address City State Zip

Statute requires a President, Secretary & Treasurer

Sheldon L. Miller

547 E. Jefferson, Detroit, Michigan 48226

None

Samuel A. Garcia

333 W. Fort Street, Suite 1600, Detroit, Michigan 48226

Samuel A. Garcia

333 W. Fort Street, Suite 1600, Detroit, Michigan 48226

1. Names & Complete addresses of all directors (or trustees): Statute requires at least 3.

Same as Above.

12 The authorized capital stock if any is \$ None par value \$ each

13 The purposes of the corporation Assistant or aid to the Courts.

14. The value of all real and personal property and cash owned at time of filing this report: \$ 560,000

15. The nature and kind of business in which the corporation has engaged during the year covered by this report  
Mediation Services for the courts.

16. What, if any, distribution of funds has been made to any members during the year covered by this report  
None

17. A statement of the aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.  
None

BY

Sheldon L. Miller, President

DATE SIGNED

BEST AVAILABLE COPY



FILED BY "Detroit"

SEP 16 1983

# 1983 MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS

\* FILING FEE  
\$10.00

This report shall be filed by all nonprofit corporations on or before October 1, 1983. This report is submitted in accordance with the provisions of Section 911, Act 162, Public Acts of 1982, as follows:

This Return must be filed on or before October 1, 1983

Account  
Corporation  
Number 70-859

## 1. Corporate Name

MEDIATION TRIBUNAL ASSOCIATION, INC

333 W. FORT ST., STE 1600  
DETROIT MI 48226

FILING FEE \$10.00  
MAILED REMITTANCE PAYABLE TO  
"STATE OF MICHIGAN"

RETURN TO  
DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
P.O. BOX 30057  
LANSING, MICHIGAN 48909

## 2. Principal Agent

SAMUEL A. GARCIA

## 3. Registered Office Address in Michigan - No., Street, City, Zip

333 W. FORT ST., STE 1600  
DETROIT MI 48226

4. Federal Employer's Id. No. 382278101  
5. Term of existence or has continued PERPETUAL

6. The Act under which incorporated is other than 1931, P.A. 327, as amended, or 1982, P.A. 162

7. State of incorporation MI

8. Incorporation date 11/16/1979

9. List of addresses (foreign corp.)

284-1972

## 10. Corporate Officers: Name, Street and Number, City, State, and Zip Code

President Sheldon L. Miller, 547 E. Jefferson Ave., Detroit, MI. 48226

Secretary if different than above

Samuel A. Garcia, 333 W. Fort Street, Suite 1600, Detroit, MI. 48226

Treasurer if different than above

Same as Secretary

Vice President if any

Richard D. Dunn, 1201 City County Bldg., Detroit, MI. 48226

## 11. Corporate Directors (if different than officers): Include Name, Street and Number, City, State, and Zip Code

Same as above

12. The authorized capital stock, if any, is \$ None and the number of shares is

13. The purposes of the corporation: To aid the Courts and provide a mediation process for litigants.

14. The value of all real and personal property and cash owned at time of filing this report: \$750,000.00

15. The nature and kind of business in which the corporation has engaged during the year covered by this report:

Mediation of Wayne County and Federal Court cases.

16. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report: None

17. A statement of the aggregate amount of any loans, advances, overcrafts or withdrawals and repayments thereof made to or by officers, directors, members, or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.

None

DATE SIGNED August 12, 1983

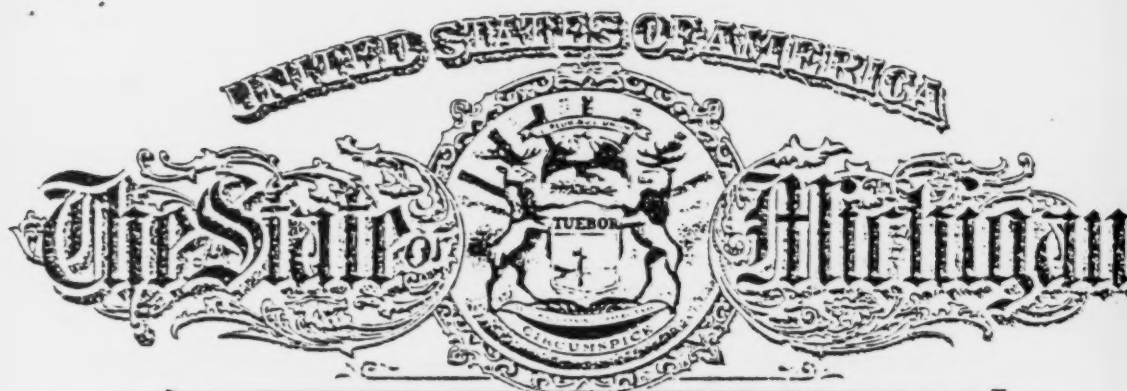
BY

Samuel A. Garcia  
(Signature of authorized officer or agent)

Secretary/Treasurer

(Type or Print Name and Title)





Michigan Department of Commerce

Lansing, Michigan

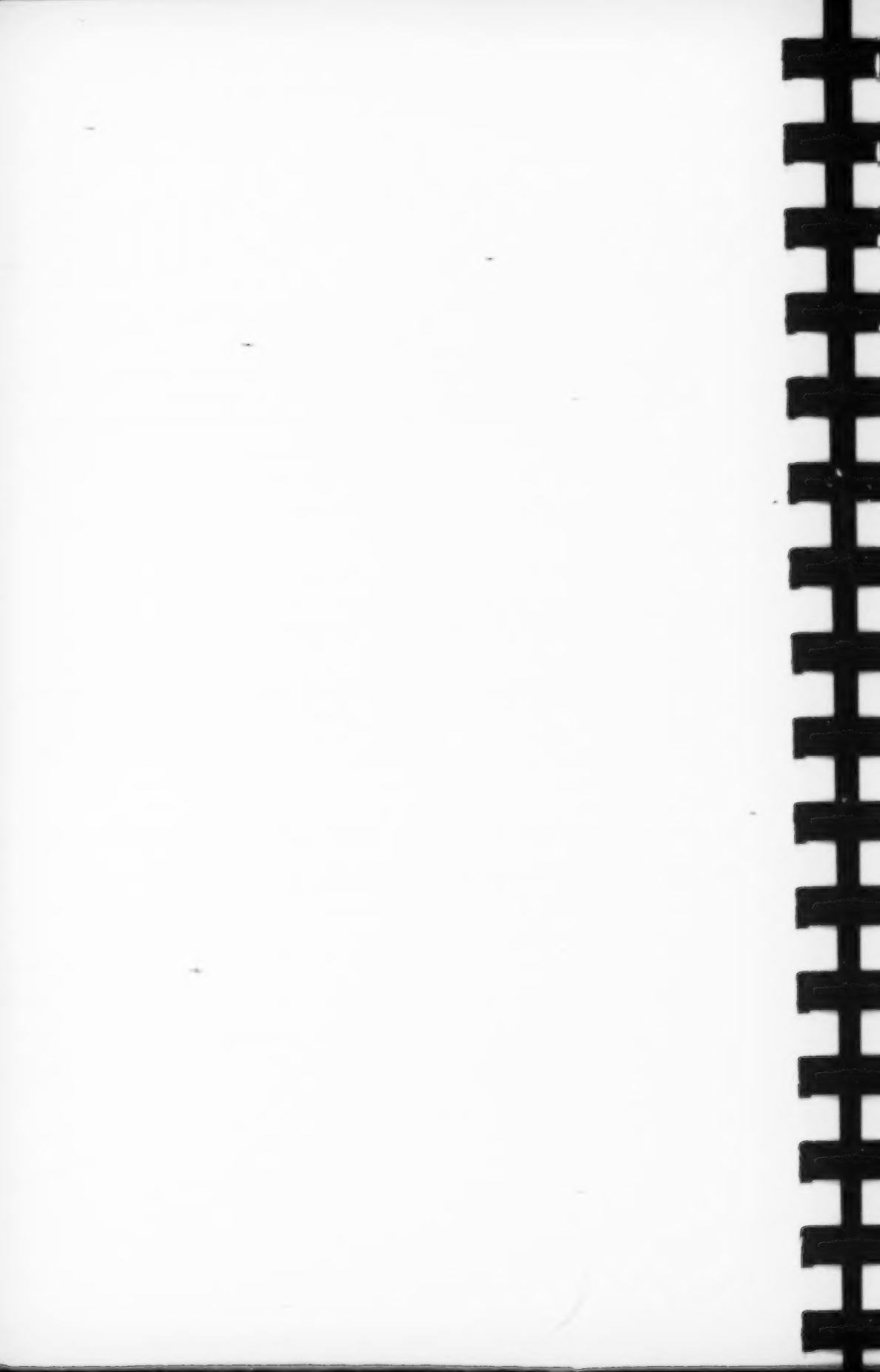
*This is to Certify That the Annexed Copy of*

1983 thru 1985 Michigan Annual Reports of MEDIATION TRIBUNAL ASSOCIATION, INC.

*has been compared by me with the record on file in this Department and that the same is a true copy thereof, and the whole of such record.*

*In testimony whereof, I have hereunto set  
hand and affixed the Seal of the Department  
in the City of Lansing, this 15th day  
of April, 1986*

*James E. [Signature] Director*



FILED BY *DETROIT*

SEP 16 1983

# 1983 MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS

FILING FEE  
\$10.00

This report shall be filed by all nonprofit corporations on or before October 1, 1983. This report is submitted in accordance with the provisions of Section 911, Act 162, Public Acts of 1982, as follows:

This Return Must be Filed on or before October 1, 1983

Insert  
Corporation  
Number 704859

## 1. Corporate Name

MEDIATION TRIBUNAL ASSOCIATION, INC

333 W. FORT ST., STE 1600  
DETROIT

MI

48226

FILING FEE \$10.00  
MAKE REMITTANCE PAYABLE TO  
"STATE OF MICHIGAN"

RETURN TO  
DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
P.O. BOX 30037  
LANSING, MICHIGAN 48909

## 2. Resident Agent

SAHLEL A. GARZIA

## 3. Registered Office Address in Michigan - No. Street, City, Zip

333 W. FORT ST., STE 1600  
DETROIT  
MI 48226

## 4. Federal Employer No. 5. Term of Existence of not perpetual

382278101

PERPETUAL

## 6. The Act Under Which Incorporated or other than 1931, P.A. 327, as amended, or 1982, P.A. 162

284-1972

## 7. State of Incorporation

MI

## 8. Incorporation Date

11/16/1979

## 9. Date of Adherence (Foreign corp.)

## 10. Corporate Officers: Name, Street and Number, City, State, and Zip Code

### President

Sheldon L. Miller, 547 E. Jefferson Ave., Detroit, MI. 48226

### Secretary - if different than above

Samuel A. Garzia, 333 W. Fort Street, Suite 1600, Detroit, MI. 48226

### Treasurer - if different than above

Same as Secretary

### Vice President - if any

Richard D. Dunn, 1201 City County Bldg., Detroit, MI. 48226

## 11. Corporate Directors (if different than officers): Include Name, Street and Number, City, State, and Zip Code

Same as above

12. The authorized capital stock, if any, is \$ NONE, and the number of shares is \_\_\_\_\_

13. The purposes of the corporation: To aid the Courts and provide a mediation process for litigants.

14. The value of all real and personal property and cash owned at time of filing this report: \$350,000.00

15. The nature and kind of business in which the corporation has engaged during the year covered by this report:  
Mediation of Wayne County and Federal Court cases.

16. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report:  
NONE

17. A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors, members, or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.  
NONE

DATE SIGNED August 12, 1983

BY

Samuel A. Garzia  
Secretary/Treasurer

(Type or Print Name and Title)

SEP 16 1983





FILED BY                     

OCT 04 1984

1984 MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS

\* FILING FEE  
\$10.00

(Please read instructions on reverse side before completing form)  
This report shall be filed by all nonprofit corporations on or before October 1, 1984. This report is required in accordance with the provisions of Section 911, Act 162, Public Acts of 1967. Penalties may be assessed under the Act for failure to file.

This Return Must be Filed on or before October 1, 1984

Insert  
Corporation  
Number

704259

1. Corporate Name

MEDIATION TRIBUNAL ASSOCIATION, INC.  
333 W. FORT ST., STE 1600  
DETROIT MI 48226

FILING FEE \$10.00  
MAKE REMITTANCE PAYABLE TO  
"STATE OF MICHIGAN"

RETURN TO:  
DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
P.O. BOX 30057  
LANSING, MICHIGAN 48909

2. Resident Agent

SAMUEL A. GARZIA

3. Registered Office Address in Michigan - No., Street, City, Zip

333 W. FORT ST., STE 1600  
DETROIT MI 48226

4. Federal Employer No.

382278101

5. Term of Existence (if not perpetual)

PERPETUAL

6. The Act Under Which Incorporated (if other than 1931, P.A. 327, as amended, or 1962, P.A. 162)

284-1972

7. State of Incorporation

MI

8. Incorporation Date

11/16/1979

9. Date of Admission (foreign corp.)

10. Corporate Officers and Directors

OFFICE		NAME, STREET & NUMBER, CITY, STATE & ZIP CODE
If Different than President	President	Sheldon L. Miller, 547 E. Jefferson, Detroit, MI 48226
	Secretary	Samuel A. Garzia, 333 W. Fort St., Ste. 1600, Detroit, MI 48226
	Treasurer	Samuel A. Garzia, 333 W. Fort St., Ste. 1600, Detroit, MI 48226
	Vice President	
If Different than Officers	Director	Same as above, and
	Director	Hon. Richard D. Dunn, 1801 City County Bldg., Detroit, MI 48226
	Director	
	Director	

11. The authorized capital stock, if any, is \$ None and the number of shares is None

12. The purposes of the corporation: Assistance to the courts

13. The value of all real and personal property and cash owned at time of filing this report: \$ 790,118

14. The nature and kind of business in which the corporation has engaged during the year covered by this report:

Mediation for the courts.

15. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report:

None

16. A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors, members, or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.

None

DATE SIGNED

9/13/84

BY

Sheldon L. Miller  
(Signature of Authorized Officer or Agent)

Sheldon L. Miller, President

(Type or Print Name and Title)



**FILED & DATED**  
**OCT 22 1985**

**1985 MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS**

**FILING FEE \$10.00**

(Please read instructions on reverse side before completing form)  
This report shall be filed by all nonprofit corporations on or before October 1, 1985. This report is required in accordance with the provisions of Section 911, Act 162, Public Acts of 1962. Penalties may be assessed under the Act for failure to file.  
This return must be filed on or before October 1, 1985.

Insert Corporation Number **704859**

**1. Corporate Name**

**MEDIATION TRIBUNAL ASSOCIATION, INC.**  
**333 W. FORT ST., STE 1600**  
**DETROIT MI 48226**

FILING FEE: \$10.00  
MAKE REMITTANCE PAYABLE TO "STATE OF MICHIGAN"  
RETURN TO:  
DEPARTMENT OF COMMERCE  
CORPORATION AND SECURITIES BUREAU  
P.O. BOX 30057  
LANSING, MICHIGAN 48809

**2. Resident Agent**

**SAMUEL A. GARZIA**

**3. Registered Office Address in Michigan - No. Street, City, & Zip**

**333 W. FORT ST., STE 1600**  
**DETROIT MI 48226**

**4. Federal Employer No.**

**382278101**

**5. Term of Existence (if not perpetual)**

**PERPETUAL**

**6. The Act Under Which Incorporated (if other than 1931, P.A. 327, as amended, or 1962, P.A. 162)**

**286-1972**

**7. State of Incorporation**

**MI**

**8. Incorporation Date**

**11/16/1970**

**9. Date of Admission (Foreign corp.)**

**10. Corporate Officers and Directors**

OFFICE		NAME, STREET & NUMBER, CITY, STATE & ZIP CODE
If Different than President	President	<b>SHELDON L. MILLER - 547 E. JEFFERSON, DETROIT, MI 48226</b>
	Secretary	<b>SAMUEL A. GARZIA - 333 W. FORT ST. - SUITE 1600, DETROIT, MI 48226</b>
	Treasurer	<b>SAMUEL A. GARZIA - 333 W. FORT ST. - SUITE 1600, DETROIT, MI 48226</b>
	Vice-President	
If Different than Officers	Director	<b>SAME AS ABOVE, AND</b>
	Director	<b>HON. RICHARD D. DUNN 1801 CITY - LOUNGE #600, DETROIT, MI 48226</b>
	Director	
	Director	

11. The authorized capital stock, if any, is \$ NONE and the number of shares is NONE

12. The purposes of the corporation: ASSISTANCE TO THE COURTS

13. The value of all real and personal property and cash owned at time of filing this report: \$53,045

14. The nature and kind of business in which the corporation has engaged during the year covered by this report: MEDIATION FOR THE COURTS

15. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report: NONE

(If none, insert "None")

16. A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors, members, or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.

(If none, insert "None")

DATE SIGNED Sept 30, 1985

BY SAMUEL A. GARZIA  
Secretary of Association/Corporate Agent  
**SAMUEL A. GARZIA**  
SEC-TN

(Type or Print Name and Title)



APPENDIX G



STATE OF MICHIGAN  
IN THE CIRCUIT COURT  
FOR THE COUNTY OF WAYNE

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs,

v

No. 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants.

---

JUDGMENT FOR PLAINTIFFS

At a session of said court held in the Old  
County Building on July 13, 1983.

Present: Hon. Thomas Roumell, Circuit Court  
Judge

Pursuant to receipt of a mediation notice  
and pursuant to the Court having heard the  
motion of the Plaintiffs for an Order to Compell  
Mediation Tribunal to Accept Plaintiffs' Re-  
jection of Mediation Award, and an Answer  
having been filed thereto by the Defendants,  
and the Court being fully advised in the





premises; it is hereby ordered that a judgment shall issue on behalf of the Plaintiffs and against the Defendants, Franco Food Equipment, Inc., a Michigan Corporation, only, in the following amounts:

IT IS HEREBY ORDERED AND ADJUDGED, that a Judgment shall issue in the amount of Twelve Thousand (\$12,000.00) Dollars on behalf of George S. Mills, Sr., against the Defendant, Franco Food Equipment, Inc., a Michigan corporation,

IT IS FURTHER ORDERED AND ADJUDGED, that a Judgment in the sum of Three Thousand (\$3,000.00) Dollars shall issue on behalf of John F. Kavalick against the Defendant, Franco Food Equipment, Inc., a Michigan Corporation only,

IT IS FURTHER ORDERED AND ADJUDGED, that a Judgment shall issue in the amount of Two Thousand (\$2,000.00) Dollars on behalf of the Defendant, Gary Forsythe



against the Defendant, Franco Food Equipment, Inc., a Michigan Corporation only,

IT IS- FURTHER ORDERED AND ADJUDGED, that a Judgment shall issue in the sum of One Thousand (\$1,000.00) Dollars on behalf of Harvey Schirrmacher against the Defendant, Franco Food Equipment, Inc., a Michigan Corporation only,

IT IS FURTHER ORDERED AND ADJUDGED, that there shall be a Judgment of no cause of action against the Defendants Terrance A. Franco and Louise Ann Franco, his wife,

IT IS FURTHER ORDERED AND ADJUDGED, that the Counter-Complaint of the Defendants against the Plaintiffs shall be dismissed for no cause of action,

IT IS FURTHER ORDERED AND ADJUDGED, that the above Judgment includes all fees, costs and interests to the date of Judgment.



THOMAS ROUMELL

---

Circuit Court Judge



## APPENDIX H





STATE OF MICHIGAN  
IN THE CIRCUIT COURT  
FOR THE COUNTY OF WAYNE

GEORGE C. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs,

v No. 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants.

---

ORDER DENYING PLAINTIFFS'  
MOTION FOR REHEARING

At a session of said Court, held in the Old  
County Building, City of Detroit, County of  
Wayne, State of Michigan, On July 13, 1983.

Present: Honorable Thomas Roumell, Circuit  
Judge

The Court having received Plaintiffs'  
Motion for Rehearing on May 13, 1983 and  
having considered such motion as one request-  
ing leave to be granted for a rehearing of the  
Court's April 14, 1983 decision and the Court  
having had pleadings, testimony and oral



arguments from the respective sides of this litigation and the Court having had presented to it under GCR 1963, 522.2(2) a judgment for entry and no specific objections to its entry or its form and content having been received,

NOW THEREFORE, for the reasons stated in the Court's Opinion:

IT IS HEREBY ORDERED that Plaintiffs' motion to have a rehearing of the Court's decision of April 15, 1983 be and is hereby denied for the reason that no new matters or persuasive reasons were presented by Plaintiffs for the granting of same by the Court.

IT IS HEREBY FURTHER ORDERED that the Defendant's proposed judgment presented for entry under the provisions of GCR 1963, 522.1(2) be signed and entered.

---

THOMAS ROUMELL

Circuit Court Judge



APPENDIX I



STATE OF MICHIGAN  
IN THE CIRCUIT COURT  
FOR THE COUNTY OF WAYNE

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs,

v No. 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants.

---

OPINION AND ORDER DENYING PLAINTIFF'S  
MOTION FOR HEARING

On Friday, April 15, 1983, the Court rejected the Plaintiffs' motion seeking to have this court order Mediation Tribunal to accept Plaintiffs' late rejection of the mediation award which the Tribunal had issued in the above captioned case. According to GCR 1963, 522.1(2) the Defendant filed a judgment for entry in accordance with the Court's ruling and set the date of May 13, 1983 for the Court





to receive Plaintiffs' objections, if any, why the judgment presented should not be signed and entered by the Court.

Plaintiffs did not submit objections to the judgment as to its contents and as to whether or not it comported to the Court's oral findings and order on the record issued on April 15, 1983. Rather, Plaintiffs filed a "Motion for an Evidentiary Hearing on the Rehearing of Plaintiffs' Motion to Compel the Mediation Tribunal to Accept Plaintiffs' Rejection of the Mediation Award." Ordinarily, the Court would not consider this approach as responsive to the mandates of GCR 1963, 522.1(2). It is clear to the Court that Plaintiffs have defaulted in complying with that rule requirement. Moreover, the Court notes, Plaintiffs did not file any objections to the proposed judgment submitted by the Defendants herein.

To avoid undue burden on the litigants in this matter, however, not to mention the unwarranted imposition on this Court's docket,



the Court will accept and consider ~~Plaintiffs'~~ motion under the provisions of WCCR 119.8, headed "Rehearing of Motions." Sub-sections (F) and (G) of this rule provide:

F. There is no oral argument on a motion for rehearing unless the assigned judge requests it.

G. Leave to file (a delayed motion for rehearing) will not be accepted for filing unless leave to file it has first been granted by order of the judge who heard the motion or order to show cause sought to be heard.

The Court will consider and review Plaintiffs' motion as a request for rehearing. Aside from the fact that Plaintiffs furnished no authority for their request to be afforded an "Evidentiary Hearing" and none will be extended inasmuch as the Court is amply assisted by (a) the transcript of the proceedings and the testimony taken in open-court on April 15, 1983 and (b) the Court's notes of the proceedings had in open-court on May 13, 1983 and for all practical purposes those proceedings could very well be considered as an



evidentiary hearing and (c) the pleadings of both parties heretofore filed in connection with these proceedings. Moreover, the Court is impressed any evidentiary hearing beyond that had will be no more than repetitive and cumulative of what is already at hand for the Court's guidance and information.

In considering whether the Court should grant Plaintiffs' request for a rehearing of the Court's decision rendered orally from the bench on April 15, 1983, the Court has carefully reviewed findings which the Court made then and makes now as follows:

a. The Mediation Tribunal award was dated February 9, 1983.

b. While the Defendants had timely filed their acceptance of the Tribunal award, the Plaintiffs rejected it and placed their rejection, according to their contention, in the U.S. Mail on March 10, 1983, properly mailed and addressed.

c. The Mediation Tribunal did not receive Plaintiffs' rejection until March 22, 1983, one day after the 40 days within which parties must notify the Tribunal of either their acceptance or rejection of the Tribunal award.



d. Both parties acknowledge that at the conclusion of the Mediation Tribunal proceedings both parties are notified of the award, each party signs, while still present, as an acknowledgement of the amount of the award and it is made abundantly clear that rejection must be received by either party no later than 40 days thereafter.

e. Rejection in this instance should have reached the Tribunal Clerk by March 21, 1983. It was not received until March 22, 1983 and it was so time-stamped. The Plaintiffs' rejection was - admitted by all - one day late in reaching the Mediation Tribunal office.

The session on May 13, 1983 was utilized in part by the Plaintiffs to have the secretary who allegedly placed Plaintiffs' rejection of the mediation award in the mail to testify to that which they presented to the Court in oral arguments and in his written motion on April 15, 1983. No new matters were presented, no different affidavits of witnesses that could have raised new and significant points in Plaintiffs' support were presented and no probative matters of any vintage by which the Court could have considered of value and importance and a basis on which to alter its





earlier opinion were even suggested as existing - even remotely.

The Court was initially and still is of the substantial doubt that it took the U.S. Mails to deliver Plaintiffs' rejection of the mediation award to the offices of the Tribunal in the length of time claimed by Plaintiffs. The Court cannot by any measure moderate its discretion or its judgment and allow that Plaintiffs acted dutifully and properly and with dispatch and thus impel the Court to exercise its discretion and other the Mediation Tribunal to accept a late rejection in the circumstances that here existed. The Court must be guided by the physical facts. Even allowing that the U.S. Mail can be and has been on occasions late and tardy in its delivery of mail, all the circumstances of this mailing as claimed by Plaintiffs are unbelievable, strain credibility and must be rejected.

Accordingly, leave to Plaintiffs to grant a rehearing on the Court's decision of April 15,



1983 is denied. The Defendants having presented timely their proposed judgment for entry under the provisions of GCR 1963, 522.1(2) and the Court having not received any objections to its entry or to its form and contents as permitted by the court rules, the judgment shall be signed and entered.

JUL 13 1983

\_\_\_\_\_  
- /s/

THOMAS ROUMELL

CIRCUIT JUDGE



APPENDIX J



AT A SESSION OF THE COURT OF APPEALS  
OF THE STATE OF MICHIGAN, Held at the  
Court of Appeals in the City of Lansing, on  
the eighteenth day of October in the year of  
our Lord one thousand nine hundred and  
eighty-five.

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs-Appellants,

v                      No. 72984  
                         L.Ct. No.79 914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants-Appellees.

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Present the Honorable

JOHN H. SHEPHERD

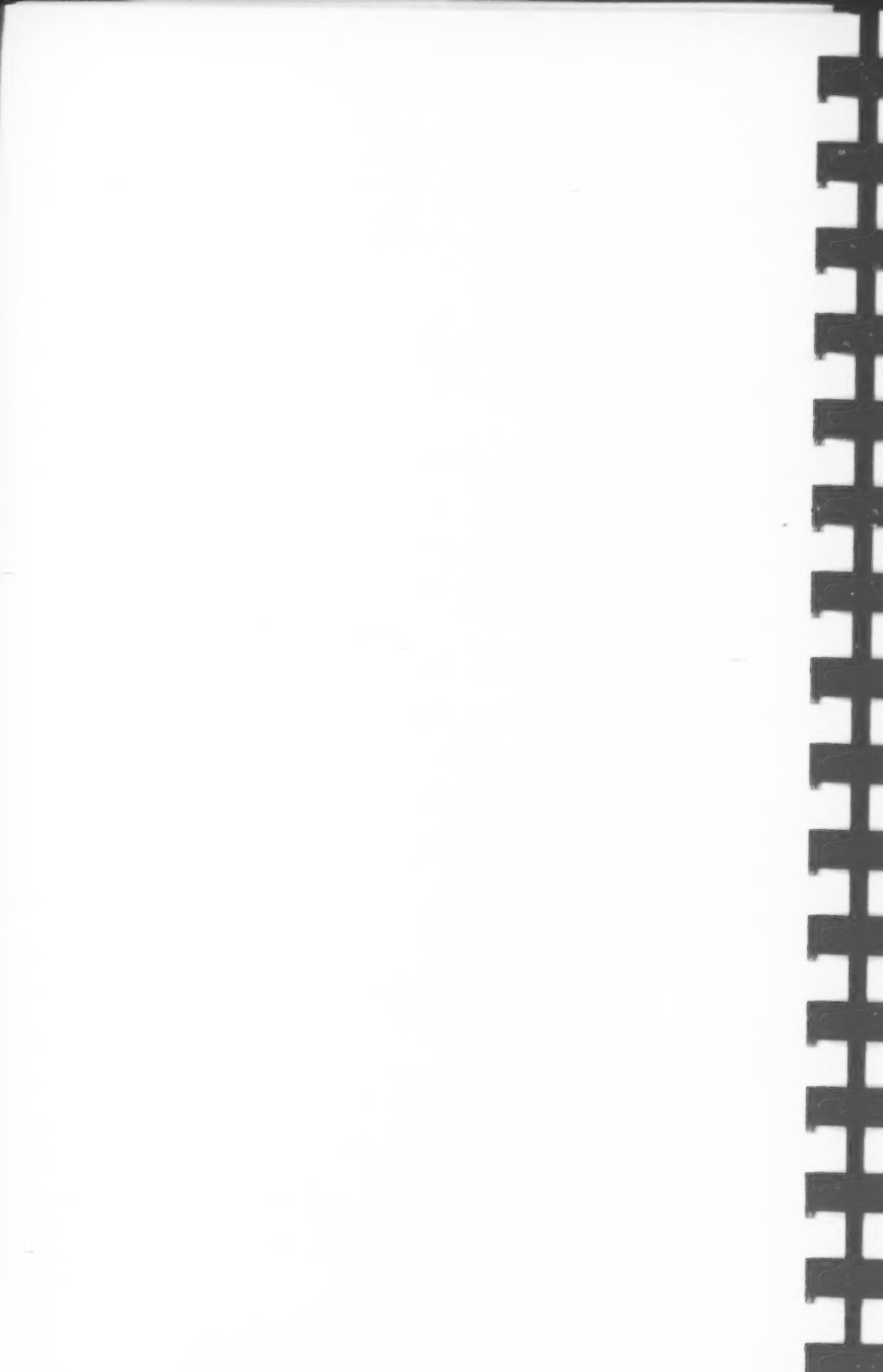
Presiding Judge

MYRON H. WAHLS

JOHN W. FITZGERALD

Judges

In this cause a motion for rehearing  
having been held in abeyance pending receipt  
of further transcripts and documentation from  
counsel, and upon reading such documentation,





IT IS ORDERED that the motion for rehearing be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that this matter be REMANDED to the Wayne County Circuit Court for an evidentiary hearing on the issue of whether the secretary to Mr. Stockler mailed the notice of rejection approximately eleven days prior to the due date. The Court shall also make findings on the reasons, if any exist, for the rejection notice having been time stamped after the due date. After making such findings the trial court shall exercise its discretion anew. We do not retain jurisdiction.

This Court finds that the trial judge based his opinion and order of July 13, 1983, on the assumption that there were evidentiary hearings, including the taking of testimony on April 15, 1983 and May 13, 1983. The record, after reconsideration, establishes that no such hearings took place and that the trial court's



opinion was based upon speculation as to what witnesses might have said. The trial court did not afford itself the opportunity of examining the witnesses and judging their credibility.

STATE OF MICHIGAN -- ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 24th day of October in the year of our Lord one thousand nine hundred and eighty-five.



/s/

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Chief Clerk



APPENDIX K





STATE OF MICHIGAN  
IN THE CIRCUIT COURT  
FOR THE COUNTY OF WAYNE

GEORGE G. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs,

v No. 79-914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants.

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ORDER DENYING PLAINTIFFS'  
REJECTION NOTICE AS TIMELY FILED

At a session of said Court, held in the  
City-County Building, Detroit, MI on May  
8-1986.

Present: Honorable Thomas RoumeII, Circuit  
Court Judge

Pursuant to the Order of the Michigan  
Court of Appeals, dated October 24, 1985,  
which mandated that an Evidentiary Hearing be  
held on the issue of whether the secretary of  
Mr. Stockler mailed the notice of rejection to  
the Mediation Tribunal Association, and



pursuant to the hearing held on November 4, 1985, and the above parties being represented by their respective counsel, and the Court having examined the testimony proffered by the Plaintiff, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, and the Court finds that the secretary of the attorney for the Plaintiffs did not mail the notice of rejection in a timely fashion,

IT IS FURTHER ORDERED, that the Plaintiffs' rejection notice to the Mediation Tribunal was not timely filed, and its request to receive same as timely filed, is hereby denied.

THOMAS ROUMELL

---

Circuit Court Judge



APPENDIX L



STATE OF MICHIGAN  
COURT OF APPEALS

---

GEORGE G. MILLS, SR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER and  
GARY FORSYTHE, Jointly and severally,

Plaintiffs-Appellants,

v

No. 92663

FRANCO FOOD EQUIPMENT, INC., a Michigan  
Corporation, TERRANCE A. FRANCO and  
LOUISE ANN FRANCO, jointly and severally,

- Defendants-Appellees.

---

DATED: JULY 7, 1987

Before: M.H. Wahls, P.J., M.J. Kelly and  
C.W. Simon, JJ.

M. J. Kelly, J.

The parties have this Court's February  
21, 1985 opinion in Case No. 72984, and its  
order on rehearing dated October 24, 1985.  
The facts need not be repeated.

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\* Circuit judge, sitting on the Court of  
Appeals by assignment.





Because of the order on rehearing the doctrine of law of the case is inappropriate and inapplicable on these facts.

We hold that timely rejection of the mediation award is not complete upon mailing.

On review, however, we have a definite and firm conviction that the trial court erred in denying plaintiff's request to have its rejection notice received by the mediation tribunal as timely filed and we therefore reverse.

Two witnesses testified that the rejection was indeed mailed timely, in fact 11 days before the deadline. There was testimony regarding the percentage of delayed mail delivery by the United States Post Office in the area serviced. The trial court concluded:

"The item that would have put this entire problem to rest once and for all is a [sic] fact the letter envelope which was used by Mr. Stockler's office to mail the rejection, which would have shown the postmark of it having been placed in the U.S. Mails, just isn't available, and no one is at fault for this; that is, for its unavailability."



That unavailability was not the fault of the plaintiff. The plaintiff's attorney introduced his copies of the correspondence and his secretary testified as to the date of the mailing. The Mediation Tribunal routinely discarded envelopes.

Unless the witnesses, Mr. Stockler, a practicing attorney, and his secretary of 11 years Miss Gail Musialowski conspired to commit perjury and a fraud upon the court, there was un rebutted testimony that the rejection was timely mailed. If it was a delayed delivery on the part of the United States Post Office, then the rejection should have been deemed timely and the motion granted.

Reversed.

/s/ Michael J. Kelly

/s/ Charles W. Simon



STATE OF MICHIGAN  
COURT OF APPEALS

---

GEORGE C. MILLS, SR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER and  
GARY FORSYTHE, Jointly and severally,

Plaintiffs-Appellants,

v

No. 92663

FRANCO FOOD EQUIPMENT, INC., a Michigan  
Corporation, TERRANCE A. FRANCO and  
LOUISE ANN FRANCO, jointly and severally,

Defendants-Appellees.

---

DATED: JULY 7, 1987

BEFORE: M.H. Wahls, P.J., M.J. Kelly and  
C.W. Simon, JJ.

Myron H. Wahls, J. (dissenting).

I respectfully dissent.

John Burroughs once wrote that "It is  
always easier to believe than to deny. Our  
minds are naturally affirmative." Neverthe-  
less, in this case, the trial judge, both before  
and after conducting an evidentiary hearing on

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\* Circuit judge, sitting on the Court of  
Appeals by assignment.



remand, chose not to believe. Since he had the discretion to do so, and since we review for an abuse of discretion, I would affirm in this case. In short, the trial judge simply had the right to not believe, and we do not have the right to reverse based on our disagreement with his unbelief.

The factual background of the case must be reviewed to set the matter now at issue into context. In 1979, plaintiffs filed a complaint in Wayne County Circuit Court against defendants seeking damages for breach of contract, fraud and misrepresentation [sic], deceit, conversion, and civil rights violations. In 1983, the case was submitted to mediation, resulting in a unanimous evaluation of \$18,000. Defendants accepted this evaluation, and plaintiffs were deemed to have accepted it due to the failure on their part to file a timely rejection. It is the untimeliness of this rejection which forms the basis of the issue now on appeal.





Judge Thomas Roumell denied plaintiffs' motion for an order requiring the mediation tribunal to accept a late rejection of the mediation award, and he subsequently denied plaintiffs' motion for a rehearing. Although this Court initially affirmed the trial court in an unpublished per curiam opinion, it later granted plaintiffs' motion for a rehearing, which resulted in a remand to the trial court for an evidentiary hearing. On November 4, 1985, that hearing was conducted, and on February 14, 1986, Judge Roumell disclosed his findings of fact based on the evidence produced, once again resulting in a denial of plaintiffs' motion for reconsideration. Plaintiffs appealed as of right from Judge Roumell's February 14, 1986 decision, and two members of this panel now reverse on the basis of their definite and firm conviction that the trial court erred in denying plaintiffs' request. My brethren emphasize that, "Unless the witness, Mr. Lawrence Stockler, a practicing attorney,



and his secretary of 11 years Miss Gail Musialowski conspired to commit perjury and fraud upon the court, there was unrebutted testimony that the rejection was timely mailed." I view this reassessment of the parties' honesty based on a "paper review" on appeal to be highly suspect in light of the trial judge's superior ability to assess credibility and on my inability to perceive any abuse of discretion [sic] in that original assessment.

At the evidentiary hearing conducted on November 4, 1985 before Judge Roumell, Gail Musialowski testified that she had been employed as a legal secretary at the office of Stockler & Herbach, P.C., attorneys for plaintiffs in this case, for the past eleven years. She testified that she had mailed the rejection of the \$18,000 mediation evaluation by placing it in a mailbox located in the Cadillac Tower Building in Detroit on March 10, 1983 -- eleven days before the expiration of the



applicable 40-day time period. WCCR 403.7(e), 15(a).

Thomas Webster, an employee of the United States Postal Service, testified that first class mail which was deposited into the U.S. Mail at Cadillac Tower Building and addressed to the nearby Lafayette Building, where the mediation tribunal was then located, should have reached its destination overnight; a longer delivery time, he stated, would be considered a delayed delivery. Webster stated that his survey in the consumer affairs office of the post office during the relevant time period revealed that 1,741 complaints for delayed deliveries had been received. He said that the Detroit post office handled approximately [sic] 4,000,000 pieces of mail per day and that approximately five percent were delayed in delivery.

Robert W. Schweikart, the mediation tribunal clerk for the Mediation Tribunal Association, testified that, in accordance with



the tribunal's normal procedure, the time-stamped envelope which contained plaintiffs' mediation rejection and the cover letter which allegedly accompanied the rejection had not been retained. Thus, there was no way to determine from the tribunal's records, he stated, whether the rejection had in fact been mailed twelve days prior to its being time-stamped as received by the Mediation Tribunal Association on March 22, 1983 -- one day past the 40-day time period allowed. Schweikart observed that he was unaware of a single instance in which a rejection was not time-stamped on the date it was physically received by his office.

In Hauser v Roma's of Michigan, 156 Mich App 102; \_\_\_NW2d\_\_\_ (1986), a panel of this Court recognized that a trial court, under MCR 2.612(C)(1), has the discretion to refuse to set aside a mediation award on the ground that the plaintiff had failed to timely reject it under MCR 2.403(L)(1). The effect of that





court rule is very similar to the effect that WCCR 403 worked in this case. Under the court rule, the failure to file a written acceptance or rejection of a mediation evaluation within 28 days constitutes an acceptance, and under the Wayne County rule, written acceptance or rejection must be given within 40 days of the mailing of the evaluation. In Hauser, we stated that a trial court's determination regarding the pre-judgment setting aside of a party's acceptance or rejection of a mediation evaluation rests within that court's discretion and that a judgment on the acceptance should not be set aside absent an abuse of discretion such that a failure to do so would result in substantial injustice. In Hauser, with this jurist writing for the panel, we observed that:

"A trial court has the discretion to set aside a party's acceptance of a mediation evaluation prior to the entry of a judgment upon the award. MGM Breaks Division of Indian Head, Inc v Uni-Bond, Inc, 417 Mich 905; 330 NW2d 853 (1983). Although the determination is



discretionary, the judgment on the acceptance should be set aside only if failure to do so would result in substantial injustice. Muntean v Detroit, 143 Mich App 500, 511; 372 NW2d 348 (1985). "The court must 'strike a balance between the goal of remedying injustice, on the one hand, and the desire to achieve finality in litigation, on the other hand.'" Id. (Citation omitted.)

We only reverse the lower court where there has been an abuse of discretion. Muntean, supra.

[A]n abuse of discretion involves far more than a difference in judicial opinion between the trial and appellate courts. The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. [Spalding v Spalding, 355 Mich 382, 384-385; 94 NW2d 810 (1959).]" 156 Mich App at 104-105."

Emphasizing the "narrow standard of review" applicable, in Hauser we affirmed the trial court's refusal to set aside plaintiffs' acceptance of the mediation evaluation which resulted from their failure to timely respond.



Plaintiffs herein also rely on this Court's decision in Muntean v Detroit, 143 Mich App 500; 372 NW2d 348 (1985), which was cited in Hauser, supra. In Muntean, defendant appealed from an order denying its motion to set aside a judgment which was entered as a result of defendant's failure to reject a mediation evaluation within 40 days pursuant to WCCR 403.7(e), 403.15(a). The trial judge who denied defendant's motion to permit late rejection of the mediation evaluation incorrectly believed that he had no discretion to rule in defendant's favor. This Court remanded the matter for reconsideration of defendant's motion, noting that it would not necessarily constitute an abuse of discretion to grant a motion to set aside the judgment "based on the admittedly neglectful misplacement of a file in defense counsel's office." Muntean, supra, pp 507-508. The panel in Muntean cited several cases in which this Court refused to find an abuse of discretion in denying relief under



circumstances similar to those present in that case. However, it distinguished those cases, stating:

"Nevertheless, affirmance in those cases was based, at least in part, on the standard of review. We did not hold that the trial court would have abused its discretion by granting relief, but only that the court did not abuse its discretion in refusing it.

That in many cases a court would not abuse its discretion by either granting or denying relief from a judgment is an inevitable result of the standard of review. Whether we apply the nearly insurmountable test of Spalding v Spalding, 355 Mich 382, 384-385; 94 NW2d 810 (1959), or the more balanced view suggested in Langnes v Green, 282 US 531, 541; 52 S Ct 243; 75 L Ed 520 (1931), the concept of discretion denotes the absence of a single, correct result \* \* \* 143 Mich App at 508-509.

Thus, Muntean makes clear that when a trial court exercises its discretion, there is, necessarily, no one correct answer, and that the trial court is in the best position to make a discretionary decision because it enjoys the exclusive opportunity to hear the witnesses firsthand. Muntean, supra, p 509. The trial court's exercise of discretion in this case is





consistent with Muntean rationale; on appeal, we must be mindful that the concept of discretion denotes the absence of a single, correct result.

In my view, the trial judge's exercise of discretion in this case was far from abusive, and I am certainly not left with a definite and firm conviction that that judge erred in denying plaintiffs' request to have their untimely notice received by the mediation tribunal as timely filed, as is the majority in this case. In his findings of fact enunciated on February 14, 1986, Judge Roumell stated:

"The 11th day suggested by the secretary in the mailing of the rejection to Mediation Tribunal becomes just as difficult to harmonize to the reality of having it arrived [sic] late and no fault except the United States Postal Service is extremely difficult for the Court to fathom, and accept.

While the plaintiffs could show United States Postal Service statistics that lateness in mail delivery is indeed not a remote event, neither could plaintiffs show or hint to any other fact or intervening event which could have arguably claimed to have caused a delay without



any fault on the part of Mr. Stockler's office."

Continuing, Judge Roumell concluded:

"All items and testimony considered and evaluated, all benefits and doubts cast to those who merited them, and looking at a letter mailed 11 days prior to its appointed date line for arrival, notwithstanding the Postal Service statistics or other arguments, the Court cannot and is not persuaded that the tardiness of the arrival of the rejection can be justified on any ground, not on any plausible argument, nor on any convincing testimony received during the evidentiary hearing."

The trial court in this matter found the explanation of the secretary to be less than credible. This was the basis for its ruling, and such finding does not embody extraordinary or unusual circumstances that would render the trial court's refusal to set aside the evaluation an abuse of discretion. The court acknowledged that the secretary's sworn testimony constituted "the linchpin of the overall structured arguments of the plaintiffs." In the end, after hearing all the testimony and viewing the witnesses, the judge chose not to believe. He noted that the secretary stated



that she mailed the rejection notice on March 10, 1983, although she could not remember who told her to do so or what she typed on the rejection form. However, despite plaintiffs' claim that the testimony of the secretary was not impeached, there was extensive cross-examination which questioned why the secretary could definitely remember certain details regarding the mailing of the mediation rejection, which occurred years earlier, but could not remember whether her recent affidavits were in her own words or dictated to her. In addition, the trial judge's characterization of the testimony regarding delay in the U.S. mail seems apt and accurate. He remarked that "The difficulty with this data was and is that it was so general; that is direct application to the problem at hand was so minuscule, that the Court could find no worthiness to it." Of some interest, for example, would have been testimony regarding the length of delay for pieces of delayed mail in the downtown



Detroit area. The majority stresses that, "If it was delayed delivery on the part of the United States Post Office, then the rejection should have been deemed timely and the motion granted." The most significant word in that sentence, and one which I cannot lightly pass over given the facts in this case, is the first: "If."

In conclusion, I discern no reason to upset the trial court's denial of plaintiff's motion for reconsideration in light of the facts disclosed at the evidentiary hearing on remand. I particularly adhere to this conclusion in view of the very narrow standard of review applicable in this case. Although another judge might have arrived at a result contrary to Judge Roumell's had he or she presided over the evidentiary hearing, reversal on that ground alone is improper under an abuse of discretion standard of review. If a difference of judicial opinion between trial and appellate court judges is to determine the results in





cases such as this, the balance struck under the abuse of discretion standard between the goal of remedying injustice and the desire to achieve finality in litigation will unnecessarily be compromised. In this perspective, I view the majority's decision in this case reversing the trial court's denial of plaintiff's motion to represent a significant departure from the proper role of an appellate body.

Accordingly, although I agree with the majority that the doctrine of law of the case is inapplicable in this case and that the timely rejection of a mediation award is not complete upon mailing, for the reasons stated above, I would affirm.

/s/ Myron H. Wahls



APPENDIX M



AT A SESSION OF THE COURT OF APPEALS  
OF THE STATE OF MICHIGAN, Held at the  
Court of Appeals in the City of Detroit, on the  
3rd day of February in the year of our Lord  
one thousand nine hundred and eighty seven.

GEORGE C. MILLS, JR., JOHN F.  
KAVALICK, HARVEY SCHIRRMACHER  
and GARY FORSYTHE, jointly and  
severally,

Plaintiffs-Appellants,

v                    No. 92663  
                      L.Ct. No.79 914749-CK

FRANCO FOOD EQUIPMENT, INC. a  
Michigan corporation, TERRANCE  
A. FRANCO and LOUISE ANN FRANCO,  
jointly and severally,

Defendants-Appellees.

---

Present the Honorable

Myron H. Wahls  
Presiding Judge

Michael J. Kelly  
Charles W. Simon, Jr.  
Judges

In this cause plaintiffs-appellants have  
filed a motion for leave to file supplemental  
brief along with a motion for immediate consid-  
eration, and no answer in opposition thereto  
having been filed, and due consideration  
thereof having been had by the Court,



IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the motion for leave to file supplemental brief, be and the same is hereby GRANTED.

STATE OF MICHIGAN -- ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 6th day of February in the year of our





Lord one thousand nine hundred and  
eighty-seven.

/s/

Chief Clerk